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**NOTE**

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From: Presidency

To: Delegations/Mixed Committee  
(EU-Iceland/Liechtenstein/Norway/Switzerland)

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Subject: Proposal for a Regulation of the European Parliament and of the Council establishing an Entry/Exit System (EES) to register entry and exit data and refusal of, entry data of third country nationals crossing the external borders of Member States of the European Union and determining the conditions for access to the EES for law enforcement purposes and amending Regulation (EC) No 767/2008 and Regulation (EU) No 1077/2011

Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) No 2016/399 as regards the use of the Entry/Exit System

- Preparation of further steps

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**I. Introduction**

1. On 6 April 2016 the Commission submitted the legislative package on Smart Borders, which included a proposal for a Regulation for the establishment of an Entry/Exit System (EES)<sup>1</sup> and a proposal for Regulation amending the Schengen Borders Code to integrate the technical changes that resulted from the new proposal for a Regulation establishing an Entry/Exit System (EES)<sup>2</sup>.

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<sup>1</sup> Doc. 7675/16.

<sup>2</sup> Doc. 7676/16 + ADD1.

2. The Slovak Presidency has built on the work carried out by the Netherlands Presidency and brought forward the examination of the texts in the Council preparatory bodies. A number of compromise proposals reflecting the oral and written comments by delegations were presented by the Presidency. They were the object of thorough examination during four Working Party on Frontiers meetings, held on 11 July, 23 September, 26 October and 14 November 2016.
3. Policy debates were held at political level, both in the JHA Council (13 October 2016) and in SCIFA (13 September and 25 October 2016) to give guidance to the aforementioned Working Party on certain politically sensitive issues.
4. The European Council at its meeting of 20 October 2016 called on the Council to establish its position by the end of the year. The Presidency is deploying its best efforts to meet this objective and secure a mandate to open interinstitutional negotiations with the European Parliament.

## **II. Outstanding issues**

5. Considerable progress has been made under the current Presidency on many technical aspects of the proposals such as:
  - the scope of the proposal<sup>1</sup>;
  - the optimal choice and use of biometric identifiers to be included in the system;
  - the transfer of data to third countries;
  - data retention periods at EU and national level;
  - the interoperability with VIS;
  - the costs of the system at European and national level.

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<sup>1</sup> Some delegations have asked to enlarge the scope of the proposal to include people enjoying the freedom of movement.

6. However, a number of issues remains outstanding at this stage, including in particular:
- the calculation of the duration of stay in Member States not yet fully applying the Schengen acquis in full (Art. 3a);
  - the conditions to grant access to the EES to law enforcement authorities (Chapter IV);
  - the interaction between the EES and bilateral agreements (Art. 54) and
  - the obligation/possibility of stamping travel documents in case of technical failure of the EES (Art. 19)
7. On 28 October 2016 the Council Legal Service published a written opinion on the territorial scope of application of the EES in the light of Article 6(1) of the Schengen Borders Code for the purpose of calculating the short-stay (90 days in any 180-day period)<sup>1</sup>. The Presidency then tabled a revised proposal to reflect this written opinion, which has numerous implications on several provisions of the EES draft Regulation as well as on the Regulation amending the Schengen Borders Code. The issue of the calculation of the duration of stay is currently the main outstanding issue and it requires careful consideration. Several delegations have requested the Commission to put its position on this issue in writing, and to provide an analysis of the legal implications on other policies of the Council Legal Service's interpretation. It is proposed to keep this issue on hold until the Commission has clarified its position on this matter.
8. Concerning the conditions for access to the EES by law enforcement authorities, a number of delegations called for their softening, notably to respond to the risk represented by criminals with multiple identities (a problem which would not be addressed if the access is sequential and the EES can only be consulted if there is no previous hit when consulting other databases) and to accelerate the access procedure in case of urgency. The Presidency trusts that the compromise proposal on both counts attached to this note will respond to the concerns of delegations, taking into account that any further facilitation in the access conditions would not likely pass the proportionality test and a potential judicial review.

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<sup>1</sup> Doc. 13491/16.

9. The issue of the interaction between the EES and bilateral agreements has been discussed at length, including in the Visa Working Party. The Presidency compromise solution has the advantage to keep into force the existing bilateral agreements, as requested by a majority of delegations, and therefore to limit the impact on diplomatic relations, compared to the option chosen by the Commission to denounce those agreements. However, issues such as the concatenation of different bilateral agreements, i.e. the possibility to extend the duration of stay more than once on the basis of different bilateral agreements - an option which has been excluded by the Presidency in order to have a workable solution - are still raised by some delegations.
10. In case of technical failure of the EES, the Presidency compromise proposal foresees the obligation to stamp the travel documents. Some delegations have considered that such solution would amount to an excessive administrative burden, or that it is not really needed because the relevant data would be in any case recorded in the system at a later stage when the functioning of the EES would resume.

### III. Conclusions

11. The Presidency has the objective to reach a mandate on the EES file by the end of the year, as requested by the European Council. It intends to examine the outstanding issues mentioned above at forthcoming meetings of the competent Council bodies.
12. For this purpose, the latest Presidency compromise proposals are attached in the Annexes to this Note<sup>1</sup>.
13. While continuing to fine-tune the texts to accommodate delegations' drafting comments on different Articles of the proposals and to ensure internal consistency between different parts of the proposals, the Presidency invites delegations to focus on the major outstanding issues, so as to speed up the process leading to the adoption of a mandate on the whole texts, or at least on most of them.

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<sup>1</sup> As usual, the new additions are highlighted in **bold/underline**. The changes already included in the previous version of the documents are highlighted in underline. Deletions of parts of the Commission proposals are marked as [...].

Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**establishing an Entry/Exit System (EES) to register entry and exit data and refusal of entry data of third country nationals crossing the external borders of the Member States of the European Union and determining the conditions for access to the EES for law enforcement purposes and amending Regulation (EC) No 767/2008 and Regulation (EU) No 1077/2011**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty of the Functioning of the European Union, and in particular, Article 77(2)(b) and (d) **and** Article 87(2)(a) **[...]** thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee<sup>1</sup>,

Having regard to the opinion of the Committee of the Regions<sup>2</sup>,

Acting in accordance with the ordinary legislative procedure,

Whereas:

1. The Communication of the Commission of 13 February 2008 entitled 'preparing the next steps in border management in the European Union'<sup>3</sup> outlined the need, as part of the European integrated border management strategy, to establish an Entry/Exit System (EES) which registers electronically the time and place of entry and exit of third country nationals admitted for a short stay to the territory of the Member States [...] and which calculates the duration of their authorised stay.
2. The European Council of 19 and 20 June 2008 underlined the importance of continuing to work on the development of the EU's integrated border management strategy, including better use of modern technologies to improve the management of external borders.

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<sup>1</sup> OJ C , , p. .

<sup>2</sup> OJ C , , p. .

<sup>3</sup> COM (2008) 69 final

3. The Communication of the Commission of 10 June 2009, entitled 'An area of freedom, security and justice serving the citizens', advocates establishing an electronic system for recording entry to and exit from Member States' territory via the crossing of external borders to ensure more effective management of access to this territory.
4. The European Council of 23 and 24 of June 2011 called for work on "smart borders" to be pushed forward rapidly. The Commission published a Communication "Smart borders – options and the way ahead" on 25 October 2011.
5. The European Council in its Strategic guidelines adopted in June 2014 stressed that *“the Schengen area, allowing people to travel without internal border controls, and the increasing numbers of people travelling to the EU require efficient management of the EU’s common external borders to ensure strong protection. The Union must mobilise all the tools at its disposal to support the Member States in their task. To this end: integrated Border Management of external borders should be modernised in a cost efficient way to ensure smart border management inter alia with an entry-exit system and supported by the new agency for large-scale IT systems (eu-LISA)”*.
6. The Communication of the Commission of 13 May 2015 entitled “A European agenda on migration” noted that *"a new phase would come with the “Smart Borders” initiative to increase the efficiency of border crossings, facilitating crossings for the large majority of ‘bona fide’ third country travellers, whilst at the same time strengthening the fight against irregular migration by creating a record of all cross-border movements by third country nationals, fully respecting proportionality”*.
7. It is necessary to specify the objectives of the Entry/Exit System (EES) and its technical architecture, to lay down rules concerning its operation and use and to define responsibilities for the system, the categories of data to be entered into the system, the purposes for which the data are to be entered, the criteria for their entry, the authorities authorised to access the data and further rules on data processing and the protection of personal data.
8. The EES should apply to third country nationals admitted for a short stay to the territory of the Member States [...]. It should also apply to third country nationals whose entry for a short stay has been refused.

The EES should be deployed at all the external borders of the Member States. Moreover, the EES should be deployed only on certain internal borders on which the controls have not yet been lifted. This is justified by reasons of economy of the process of the checks on such borders, while not affecting the level of security and the correct functioning of the EES.

8a. The length of the authorised stay of third country nationals in the territories of the Member States for the purpose of this Regulation results from the Schengen acquis applicable.

It includes the situation of a third country national, who is exempt from the visa obligation and therefore may be authorised to stay for 90 days or less days if he/she has already spent any day(s) in the last 180 days period; it also includes the **stay** of a third country national subject to a visa requirement with single or multiple short stay visa **or national short stay visa**, who may therefore be authorised to stay during the period authorised by his/her **short stay visa or national short stay visa**, while respecting the overall limit of 90 days in any 180-day period; [it also includes **the stay of** a third country national holding a touring **visa who is authorised to stay** during the period authorised by the touring visa].

It also includes situations, whereby a third country national may be authorised to stay in the territory of the Member States under specific conditions (e. g. extension of short stay in specific situations or on the basis of bilateral agreements concluded by Member States and third countries before the entry into force of the Convention implementing the Schengen Agreement).

**(8aa) The EES should not apply to third country nationals holding a residence permit or a long-stay visa and exercising mobility to another Member State in accordance with Directive 2014/66/EU<sup>1</sup> or Directive (EU) 2016/801<sup>2</sup> as those Directives set up specific intra-EU mobility schemes.**

8b. For the purpose of verification of the compliance with the limit of the authorised stay, the calculator included in the EES should take into account the different types of short stays [and stays based on touring visas] applicable under this Regulation so as to allow the Member States to inform them on the remaining authorised stay of the third country national or to check whether the third country national has not overstayed.

Any extensions of authorised stay should be taken into account for the purpose of calculation of the overall limit of 90 days in any 180-day period upon the subsequent entry of the third country national to the territory of the Member States.

8c. The calculator should take into account only the authorised stays in the territory of the Member States which operate the EES. By derogation to the general rule set out in Article 6(1) of the Schengen Borders Code, pending their connection to the EES, authorised stays in the territories of the Member States which do not operate the EES should be counted separately on the basis of stamps affixed in the travel documents of third country nationals.

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<sup>1</sup> **Directive 2014/66/EU of the European Parliament and of the Council of 15 May 2014 on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer, OJ L 157, 27.5.2014, p. 1.**

<sup>2</sup> **Directive (EU) 2016/801 of the European Parliament and of the Council of 11 May 2016 on the conditions of entry and residence of third-country nationals for the purpose of research, studies, training, voluntary service, pupil exchange schemes or educational projects and au pairing (recast), OJ L 132, 21.5.2016, p. 21.**

As regards Member States which do not yet apply the Schengen acquis in full but operate the EES, for third country nationals subject to visa requirement staying in their territories based on a **visa or a national short stay visa**, the calculator **should not indicate the authorised stay based on the visa or national short stay visa. The calculator should only indicate the stay of 90 days in any 180-day period in the territory of the Member States which apply the Schengen acquis in full and in the territory of the Member States which do not yet apply the Schengen acquis in full but operate the EES.**

9. The EES should have the objective of improving the management of external borders, preventing irregular immigration and facilitating the management of migration flows. The EES should, in particular and when relevant, contribute to the identification of any person who does not or no longer fulfils the conditions of duration of authorised stay within the territory of the Member States.
10. To meet those objectives, the EES should process alphanumeric data and biometric data (fingerprints and facial image). The use of biometrics, despite its impact on the privacy of travellers, is justified for two reasons. Firstly, biometrics are a reliable method to identify third country nationals within the territory of the Member States not in possession of travel documents or any other means of identification, a common modus operandi of irregular migrants. Secondly, biometrics provide for the more reliable matching of entry and exit data of legal travellers. Where facial images are used in combination with fingerprint data, it allows for the reduction of fingerprints registered while enabling the same result in terms of accuracy of the identification.
11. Four fingerprints of visa exempt third country nationals should be enrolled in the EES, if physically possible, to allow for accurate verification and identification (ensuring that the third country national is not already enrolled under another identity or with another travel document) and to guarantee that sufficient data is available in every circumstance. The check of the fingerprints of visa holders will be done against the Visa Information System. (VIS) established by Council Decision 2004/512/EC<sup>1</sup>. The facial image of both visa exempt and visa holding third country nationals should be registered in the EES. Fingerprints and facial image [...] should be used as the [...] biometric identifier for verifying the identity of third country nationals who have been previously registered in the EES and for as long as their individual file has not been deleted. [...] In order to take into account the specificities of each border crossing point and the different kind of borders, the national authorities should define for each border crossing whether the fingerprints or the facial image **should** be used as the main biometric identifier to perform the required verifications.

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<sup>1</sup> Council Decision 2004/512/EC of 8 June 2004 establishing the Visa Information System (VIS) (OJ L 213, 15.6.2004, p.5).



12. The EES should consist of a Central System, which will operate a computerised central database of biometric and alphanumeric data, a National Uniform Interface in each Member State, a Secure Communication Channel between the EES Central System and the VIS Central System and the Communication Infrastructure between the Central System and the National Uniform Interfaces. Each Member State should connect its national [...] infrastructures necessary for border check to the National Uniform Interface.
13. Interoperability should be established between the EES and the VIS by way of a automatic [...] communication channel between the Central Systems to enable the border check authorities using the EES to consult the VIS in order to retrieve visa-related data to create or update the entry/exit record or refusal of entry record [...]; to enable the border check authorities to verify the validity of the visa and the identity of a visa holder by means of fingerprints automatically [...] against the VIS at the external borders and to enable the border check authorities to verify the identity of visa exempt third country nationals against the VIS with fingerprints. Interoperability should also enable the border check authorities using the VIS to directly consult the EES from the VIS for the purposes of examining visa applications and decisions relating to those applications and enable visa authorities to update the visa-related data in the EES in the event that a visa is annulled, revoked or extended. Regulation (EC) No 767/2008/EC of the European Parliament and of the Council<sup>1</sup> should be amended accordingly. The automation of processes between the EES and the VIS should be subject to a human validation in each case.
14. This Regulation should define the authorities of the Member States which may be authorised to have access to the EES to enter, amend, delete or consult data for the specific purposes of the EES and to the extent necessary for the performance of their tasks.
15. Any processing of EES data should be proportionate to the objectives pursued and necessary for the performance of tasks of the competent authorities. When using the EES, the competent authorities should ensure that the human dignity and integrity of the person, whose data are requested, are respected and should not discriminate against persons on grounds of sex, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation.

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<sup>1</sup> Regulation (EC) No 767/2008 of the European Parliament and of the Council of 9 July 2008 concerning the Visa Information System (VIS) and the exchange of data between Member States on short-stay visas (VIS Regulation) (OJ L 218, 13.8.2008, p.60).

16. In the fight against terrorist offences and other serious criminal offences, it is imperative that designated [...] authorities have the most up-to-date information if they are to perform their tasks. Access to VIS data for law enforcement purpose has already proven its usefulness in identifying people who died violently or for helping investigators to make substantial progress in cases related to human being trafficking, terrorism or drug trafficking. Access to the information contained in the EES is necessary to prevent, detect and investigate terrorist offences as referred to in Council Framework Decision 2002/475/JHA<sup>1</sup> or other serious criminal offences as referred to in Council Framework Decision 2002/584/JHA<sup>2</sup>. The data generated by the EES may be used as an identity verification tool both in cases where the third country national has destroyed his/her documents and where designated [...] authorities are investigating a crime through the use of fingerprints or facial image and wish to establish an identity. It may also be used as a criminal intelligence tool to construct evidence by tracking the travel routes of a person suspected of having committed a crime or a victim of crime. Therefore, the data in the EES should be available, to the designated authorities of the Member States and the European Police Office ('Europol'), subject to the conditions set out in this Regulation.

**The conditions of access to the EES for the purposes for the prevention, detection or investigation of terrorist offences or of other serious criminal offences should be such as to allow the law enforcement authorities of the Member States to tackle the cases of suspects using multiple identities. For this purpose obtaining a hit during a consultation of a relevant database prior to accessing the EES should not prevent such access.**

17. Moreover, Europol plays a key role with respect to cooperation between Member States' authorities in the field of cross-border crime investigation in supporting Union-wide crime prevention, analyses and investigation. Consequently, Europol should also have access to the EES within the framework of its tasks and in accordance with Council Decision 2009/371/JHA.<sup>3</sup>

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<sup>1</sup> Council Framework Decision 2002/475/JHA of 13 June 2002 on combatting terrorism (OJ L 164, 22.6.2002 p.6).

<sup>2</sup> Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member State (OJ L 190, 18.7.2002, p. 1)

<sup>3</sup> Council Decision 2009/371/JHA of 6 April 2009 establishing the European Police Office (Europol) (OJ L 121, 15.5.2009, p. 37).

18. Access to the EES for the purpose of preventing, detecting or investigating terrorist offences or other serious criminal offences constitutes an interference with the fundamental rights to respect for the private life of individuals and to protection of personal data of persons whose personal data are processed in the EES. Any such interference must be in accordance with the law, which must be formulated with sufficient precision to allow individuals to adjust their conduct and it must protect individuals against arbitrariness and indicate with sufficient clarity the scope of discretion conferred on the competent authorities and the manner of its exercise. Any interference must be necessary in a democratic society to protect a legitimate and proportionate interest and proportionate to the legitimate objective to achieve.
19. Comparisons of data on the basis of a latent fingerprint, which is the dactyloscopic trace which may be found at a crime scene, is fundamental in the field of police cooperation. The possibility to compare a latent fingerprint with the fingerprint data which is stored in the EES in cases where there are reasonable grounds for believing that the perpetrator or victim may be registered in the EES should provide the designated [...] authorities of the Member States with a very valuable tool in preventing, detecting or investigating terrorist offences or other serious criminal offences, when for example the only evidence at a crime scene are latent fingerprints.
20. It is necessary to designate the competent authorities of the Member States as well as the central access point through which the requests for access to EES data are made and to keep a list of the operating units within the designated authorities that are authorised to request such access for the specific purposes for the prevention, detection or investigation of terrorist offences or of other serious criminal offences.
21. Requests for access to data stored in the Central System should be made by the operating units within the designated authorities to the central access point and should be justified. The operating units within the designated authorities that are authorised to request access to EES data should not act as a verifying authority. The central access point should be a body or entity entrusted by national law to exercise public authority and be capable, through the quality and the quantity of its staffing, to effectively verify that the conditions to request access to the EES are fulfilled in the concrete case at hand. The central access points should act independently of the designated authorities and should be responsible for ensuring, in an independent manner, strict compliance with the conditions for access as established in this Regulation. [...] Where early access is necessary to respond to a specific and actual threat related to terrorist offences or other serious criminal offences, the central access point should be able to process the request immediately and only carry out the verification afterwards.

22. To protect personal data and to exclude systematic searches, the processing of EES data should only take place in specific cases and when it is necessary for the purposes of preventing, detecting or investigating terrorist offences or other serious criminal offences. The designated authorities and Europol should only request access to the EES when they have reasonable grounds to believe that such access will provide information that will substantially assist them in preventing, detecting or investigating a terrorist offence or other serious criminal offence.
23. In addition, access to the EES for identification of unknown suspects, perpetrators or victims of terrorist offences or other serious criminal offences should be allowed only on the condition that searches with the national fingerprint databases of the Member State and with the automated fingerprinting identification systems of all other Member States under Council Decision 2008/615/JHA<sup>1</sup> did not lead to the establishment of the identity of the data subject. Furthermore, access to the EES to consult the entry/exit records of a known person should be duly justified.
24. For the purpose of efficient comparison and exchange of personal data, Member States should fully implement and make use of the existing international agreements as well as of Union law concerning the exchange of personal data already in force, in particular of Decision 2008/615/JHA.
25. The personal data stored in the EES should be kept for no longer than is necessary for the purposes of the EES. It is appropriate to keep the data related to third country nationals for a period of five years for border management purposes in order to avoid the need for third country nationals to re-enrol in the EES before that period has lapsed. For third country nationals who are family members of a Union citizen to whom Directive 2004/38/EC<sup>2</sup> applies or of a national of a third country enjoying the right of free movement under Union law and who do not hold a residence card referred to under Directive 2004/38/EC, it is appropriate to store [...] each coupled entry/exit record for a maximum period of one year after the last exit. If there is no exit record the data shall be stored for a period of five years from the last entry record.

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<sup>1</sup> Decision 2008/615/JHA of 23 June 2008 on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime (OJ L 210, 6.8.2008, p. 1).

<sup>2</sup> Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ L 158, 30.4.2004, p. 77).

26. A five year data retention period is necessary to allow the border guard performing the necessary risk analysis requested by the Schengen Borders Code before authorising a traveller entering the territory of Member States [...]. The processing of visa application in consular posts requires also analysing the travel history of the applicant to assess the use of previous visas and the respect of the conditions of authorised stay. The abandoning of passport stamping will be compensated by a consultation of the EES. The travel history available in the system should therefore cover a period of time which is sufficient for the purpose of visa issuance. The five year data retention period will reduce the re-enrolment frequency and will be beneficial for all travellers as the average border crossing time will decrease as will do the waiting time at border crossing points. Even for a traveller entering only once in the territory of Member States [...], the fact that other travellers being already registered in the EES will not have to re-enrol will reduce the waiting time at border. This data retention period will also be necessary to allow for facilitation for the border crossing by using process accelerators and self-service systems. Such facilitation is dependent of the data registered in the system. A shorter data retention period would have a negative impact on the duration of border checks [...]. A shorter data retention period would also reduce the group of travellers that can benefit of such facilitation and thereby undermine the stated objective of EES to facilitate border crossing.
27. The same retention period of five years would be necessary for data on persons who have not exited the territory of the Member States within the authorised [...] stay in order to support the identification and return process and for persons whose entry for a short stay or on the basis of a touring visa has been refused. The data should be deleted after the period of five years, unless there are grounds to delete it earlier.
28. Precise rules should be laid down as regards the responsibilities for the development and operation of the EES and the responsibilities of the Member States for the connection to the EES. The Agency for the operational management of large-scale information systems in the area of freedom, security and justice, established by Regulation (EU) No 1077/2011 of the European Parliament and of the Council<sup>1</sup>, should be responsible for the development and operational management of a centralised EES in accordance with this Regulation and the relevant provisions of Regulation (EU) No 1077/2011 should be amended accordingly.
29. Rules on the liability of the Member States in respect to damage arising from any breach of this Regulation should be laid down.

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<sup>1</sup> Regulation (EU) No 1077/2011 of the European Parliament and of the Council of 25 October 2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (OJ L 286, 1.11.2011, p 1).

30. Directive 95/46/EC of the European Parliament and of the Council<sup>1</sup> applies to the processing of personal data by the Member States in application of this Regulation unless such processing is carried out by the designated or verifying authorities of the Member States for the purposes of the prevention, detection or investigation of terrorist offences or of other serious criminal offences.
- 30a. Notwithstanding more specific rules laid down in this Regulation, for the processing of personal data, Directive 95/46/EC, Framework Decision 2008/977/JHA and Regulation (EC) No. 45/2001 apply according to their material scope.
31. The processing of personal data by the authorities of the Member States for the purposes of the prevention, detection or investigation of terrorist offences or of other serious criminal offences pursuant to this Regulation should be subject to a standard of protection of personal data under their national law which complies with Council Framework Decision 2008/977/JHA<sup>2</sup>.
32. Personal data obtained by Member States pursuant to this Regulation should not be transferred or made available to a third country, an international organisation or any private party established in or outside the Union except if necessary in individual cases in order to assist the identification of a third country national in relation to his/her return and subject to strict conditions or in an exceptional case of urgency, where there is an immediate and serious threat of a terrorist offence or other serious criminal offences and in accordance with Framework Decision 2008/977/JHA. With regard to the rules on transfer of data, the return of overstayers should be regarded as an important public interest.
- 32a. The transfer of data to a third country that are authorised in a exceptional case of urgency, where there is an immediate and serious threat of a terrorist offence or other serious criminal offence should be carried out in accordance with the applicable conditions set under Directive (EU) 2016/680<sup>3</sup> once this Directive would become applicable.

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<sup>1</sup> Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995, p. 31).

<sup>2</sup> Council Framework Decision 2008/977/JHA of 27 November 2008 on the protection of personal data processed in the framework of police and judicial co-operation in criminal matters (OJ L 350, 30.12.2008, p. 60).

<sup>3</sup> Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA (OJ L 119, 4.5.2016).

33. Regulation (EC) No 45/2001 of the European Parliament and the Council<sup>1</sup> applies to the activities of the Union institutions or bodies when carrying out their tasks as responsible for the operational management of EES.
34. The independent supervisory authorities established in accordance with Article 28 of Directive 95/46/EC should monitor the lawfulness of the processing of personal data by the Member States, whilst the European Data Protection Supervisor as established by Regulation (EC) No 45/2001 should monitor the activities of the Union institutions and bodies in relation to the processing of personal data. The European Data Protection Supervisor, [...] **and** the supervisory authorities should cooperate with each other in the monitoring of the EES.
35. National supervisory authorities established in accordance with Article 25 of Council Framework Decision 2008/977/JHA should monitor the lawfulness of the processing of personal data for law enforcement purposes by the Member States, and the national supervisory authorities established in accordance with Article 33 of Decision 2009/371/JHA should monitor the lawfulness of data processing activities performed by Europol.
36. "(...) The European Data Protection Supervisor was consulted in accordance with Article 28(2) of Regulation (EC) No 45/2001 and delivered an opinion on ...
37. The proposal establishes strict access rules to the EES system and the necessary safeguards. It also sets out the individuals' rights of access, correction, deletion and redress, in particular the right to a judicial remedy and the supervision of processing operations by public independent authorities. This Regulation therefore respects the fundamental rights and observes the principles recognised by the Charter of Fundamental Rights of the European Union, in particular the right to dignity (Article 1 of the Charter); the prohibition of slavery and forced labour (Article 5 of the Charter); the right to liberty and security (Article 6 of the Charter), respect for private and family life (Article 7 of the Charter), the protection of personal data (Article 8 of the Charter), the right to non-discrimination (Article 21 of the Charter), the rights of the child (Article 24 of the Charter), the rights of elderly (Article 25 of the Charter), the rights of persons with disabilities (Article 26 of the Charter) and the right to an effective remedy (Article 47 of the Charter).
38. The effective monitoring of the application of this Regulation requires evaluation at regular intervals. The Member States should lay down rules on penalties applicable to infringements of the provisions of this Regulation and ensure that they are implemented.

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<sup>1</sup> Regulation (EC) No 45/2001 of the European Parliament and the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1).

39. In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council<sup>1</sup>.
40. The establishment of a common EES and the creation of common obligations, conditions and procedures for use of data cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and impact of the action, be better achieved at Union level in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, the Regulation does not go beyond what is necessary in order to achieve this objective.
41. Following the entry into operation of the Entry/Exit System, Article 20(2) of the Convention implementing the Schengen Agreement should be amended [...] as regard of bilateral visa waiver agreements concluded by Member States and the authorised length of stay of third country nationals exempt from visa obligation beyond 90 days in any 180-days period [...]. [...] The Entry/Exit system could [...] take into account of and calculate the authorised length of stay of visa free third country nationals benefitting from such agreements [...].
42. The projected costs of the EES are lower than the budget earmarked for Smart Borders in Regulation (EU) 515/2014 of the European Parliament and the Council<sup>2</sup>. Accordingly, following the adoption of this Regulation, pursuant to Article 5(5)(b) of Regulation (EU) 515/2014, the Commission should, by means of a delegated act, re-allocate the amount currently attributed for developing IT systems supporting the management of migration flows across the external borders.

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<sup>1</sup> Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p.13).

<sup>2</sup> Regulation (EU) No 515/2014 of the European Parliament and of the Council of 16 April 2014 establishing as part of the Internal Security Fund, the Instrument for financial support for external borders and visa and repealing Decision No 574/2007/EC (OJ L 150, 20.5.2014, p. 143).



43. In order to ensure the smooth functioning of the EES, the initial start of operations should be limited only to the Member States which apply the Schengen acquis in full and to the Member States which do not yet apply Schengen acquis in full, but for which the verification in accordance with the applicable Schengen evaluation procedures has already been successfully completed and with regard to which the provisions of the Schengen acquis relating the Schengen information system, as well as the relevant provisions of the Schengen acquis relating the Visa information system, have been put into effect in accordance with relevant provisions of relevant Accession Treaties. Other Member States should be connected to the EES in accordance with the procedure set out in this Regulation, as soon as they meet all the above conditions.

43a. **During the transitional period pending their connection to the EES, the Member States not operating the EES should continue to apply on their borders the existing procedures set out in Regulation 2016/399, including the obligation to stamp the travel documents. During that period, those Member States will not have access to the EES. Consequently those Member States will not be in a position to take into consideration the stays in the territory of the Member States operating the EES for the purpose of determination of duration of the authorised stay in accordance with Regulation 2016/399.**

**Moreover, during that period the stays in the territory of the Member States not operating the EES will not be registered in the EES. Consequently, the Member States operating the EES will not be in a position to take those stays into consideration in an automated manner for the purpose of determination of duration of the authorised stay in accordance with Regulation 2016/399.**

**For those reasons, in order to ensure the operability of the procedures applied at borders, a derogation from Articles 6(1) and [6(1)] of Annex IX to of Regulation 2016/399 should be introduced for that transitional period in order to take into consideration separately the stays in the territory of the Member States not operating the EES and the stays in the territory of the Member States operating the EES, for the purpose of determination of duration of the authorised stay.**

44. This Regulation is without prejudice to the application of Directive 2004/38/EC.

45. In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Regulation and is not bound by it or subject to its application. Given that this Regulation builds upon the Schengen *acquis*, Denmark shall, in accordance with Article 4 of that Protocol, decide within a period of six months after the Council has decided on this Regulation whether it will implement it in its national law.

46. This Regulation constitutes a development of the provisions of the Schengen *acquis* in which the United Kingdom does not take part, in accordance with Council Decision 2000/365/EC<sup>1</sup>; the United Kingdom is therefore not taking part in the adoption of this Regulation and is not bound by it or subject to its application.
47. This Regulation constitutes a development of the provisions of the Schengen *acquis* in which Ireland does not take part, in accordance with Council Decision 2002/192/EC<sup>2</sup>; Ireland is therefore not taking part in the adoption of this Regulation and is not bound by it or subject to its application.
48. As regards Iceland and Norway, this Regulation constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the latter's association with the implementation, application and development of the Schengen *acquis*<sup>3</sup> which fall within the area referred to in Article 1, point A of Council Decision 1999/437/EC<sup>4</sup>.
49. As regards Switzerland, this Regulation constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis*<sup>5</sup> which fall within the area referred to in Article 1, point A of Council Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2008/146/EC<sup>6</sup> and with Article 3 of Council Decision 2008/149/JHA<sup>7</sup>.

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<sup>1</sup> Council Decision 2000/365/EC of 29 May 2000 concerning the request of the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen *acquis* (OJ L 131, 1.6.2000, p. 43).

<sup>2</sup> Council Decision 2002/192/EC of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen *acquis* (OJ L 64, 7.3.2002, p. 20).

<sup>3</sup> OJ L 176, 10.7.1999, p. 36.

<sup>4</sup> Council Decision 1999/437/EC of 17 May 1999 on certain arrangements for the application of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the association of those two States with the implementation, application and development of the Schengen *acquis* (OJ L 176, 10.7.1999, p. 31).

<sup>5</sup> OJ L 53, 27.2.2008, p. 52.

<sup>6</sup> Council Decision 2008/146/EC of 28 January 2008 on the conclusion, on behalf of the European Community, of the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis* (OJ L 53, 27.2.2008, p. 1).

<sup>7</sup> Council Decision 2008/149/JHA of 28 January 2008 on the conclusion on behalf of the European Union of the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis* (OJ L 53, 27.2.2008, p. 50).

50. As regards Liechtenstein, this Regulation constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis*<sup>1</sup> which fall within the area referred to in Article 1, point A of Council Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2011/350/EU<sup>2</sup> and with Article 3 of Council Decision 2011/349/EU.<sup>3</sup>
51. As regards Bulgaria, Croatia, Cyprus and Romania, provisions of this Regulation referring to VIS constitute provisions building upon, or otherwise relating to, the Schengen *acquis* within, respectively, the meaning of Article 3(2) of the 2003 Act of Accession, Article 4(2) of the 2005 Act of Accession and Article 4(2) of the 2011 Act of Accession,

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<sup>1</sup> OJ L 160, 18.6.2011, p. 21.

<sup>2</sup> Council Decision 2011/350/EU of 7 March 2011 on the conclusion, on behalf of the European Union, of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis*, relating to the abolition of checks at internal borders and movement of persons (OJ L 160, 18.6.2011, p. 19).

<sup>3</sup> Council Decision 2011/349/EU of 7 March 2011 on the conclusion on behalf of the European Union of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis* relating in particular to judicial cooperation in criminal matters and police cooperation (OJ L 160, 18.6.2011, p. 1).

HAVE ADOPTED THIS REGULATION:

**CHAPTER 1**  
**General Provisions**

*Article 1*

*Subject matter*

1. This Regulation establishes an 'Entry/Exit System' (EES) for the recording and storage of information on the date, time and place of entry and exit of third country nationals crossing the external borders of the Member States, for the calculation of the duration of their authorised stay, and for the generation of alerts to Member States when the authorised [...] stay has expired as well as for the recording of the date, time and place of refusal of entry of third country nationals whose entry for a short stay [or on the basis of a touring visa] has been refused as well as the authority of the Member State which refused the entry and the reasons for the refusal.
  
2. This Regulation also lays down in its Chapter IV the conditions under which Member States' designated [...] authorities and the European Police Office (Europol) may obtain access for consultation of the EES for the purposes of the prevention, detection and investigation of terrorist offences or of other serious criminal offences.

## Article 2

### Scope

1. This Regulation applies to third country nationals admitted for a short stay [or on the basis of a touring visa] in the territory of the Member States subject to border checks in accordance with Regulation (EU) 2016/399 when crossing the external borders of the Member States. When entering and exiting the territory of the Member States, it applies to third country nationals who are family members of a Union citizen to whom Directive 2004/38/EC applies or of a national of a third country enjoying the right of free movement under Union law and who do not hold a residence card referred to under Directive 2004/38/EC.
2. This Regulation also applies to third country nationals whose entry for a short stay [or on the basis of a touring visa] to the territories of the Member States is refused in accordance with Article 14 of Regulation (EU) 2016/399.
3. This Regulation does not apply to:
  - (a) [...] third country nationals who are members of the family of a Union citizen to whom Directive 2004/38/EC applies and who hold a residence card pursuant to that Directive;
  - (b) [...] third country nationals who are members of the family of nationals of third country enjoying the right of free movement under Union law and who hold a residence card pursuant to in Directive 2004/38/EC;
  - (c) holders of residence permits referred to in point 16 of Article 2 of Regulation (EU) 2016/399 other than those covered by points (a) and (b) of this paragraph;
  - (cc) third country nationals exercising mobility in accordance with Directive 2014/66/EU or Directive (EU) 2016/801;**

- (d) holders of long-stay visas;
- (e) nationals of Andorra, Monaco, [...] San Marino, and holders of a passport issued by the Vatican City State;
- (f) persons or categories of persons exempt from border checks or benefiting from facilitation of border crossing as referred to in Article 6a (3)(d) [...] of Regulation (EU) 2016/399
- (g) persons or categories of persons as referred to in Article 6a (3) (e), (f), (g) and (h) of Regulation (EU) 2016/399.

This Regulation does not apply to third country nationals who are [...] members of the family referred to in points (a) and (b) of the first subparagraph even if they are not accompanying or joining the Union citizen or a third country national enjoying the right of free movement.

4. The provisions of this Regulation regarding the calculation of the duration of the authorised stay and the generation of alerts to Member States when the authorised [...] stay has expired do not apply to third country nationals who are family members of a Union citizen to whom Directive 2004/38/EC applies or of a national of a third country enjoying the right of free movement under Union law and who do not hold a residence card referred to under Directive 2004/38/EC.

### *Article 3*

#### *Definitions*

1. For the purposes of this Regulation, the following definitions apply:
  - (1) 'external borders' means 'external borders' as defined in Article 2(2) of Regulation (EU) 2016/399;

- (1a) 'internal borders' means internal borders as defined in Article 2(1) of Regulation (EU) 2016/399;
- (2) 'border check authorities' mean the competent authorities assigned, in accordance with national law, to carry out checks on persons at the [...] border crossing points at external borders in accordance with Regulation (EU) 2016/399;
- (3) 'immigration authorities' mean the competent authorities assigned, in accordance with national law, to:
- (a) check within the territory of the Member States whether the conditions for entry to or of authorised stay in the territory of the Member States are fulfilled and/or
  - (b) examine the conditions and take decisions related to the [...] residence of third country nationals on the territory of the Member States and where relevant provide advice in accordance with Regulation (EU) 377/2004 and/or;
  - c) facilitate the return of third country nationals to a third country of origin or transit.**
- (4) 'visa authorities' mean the competent authorities as defined in Article 4(3) of Regulation (EC) No 767/2008 [...];
- (4a) 'determining authority' means the competent authorities as defined in Article 2(f) of Directive 2013/32/EU,
- (5) 'third country national' means any person who is not a citizen of the Union within the meaning of Article 20 (1) of the [...] TFEU, with the exception of persons who enjoy rights of free movement equivalent to those of Union citizens under agreements between the Union, or the Union and its Member States on the one hand, and third countries on the other hand;

- (6) 'travel document' means a passport or other equivalent document, entitling the holder to cross the external borders and to which a visa may be affixed;
- (7) 'short stay' means stay as defined in Article 6(1) of Regulation (EU) 2016/399;
- (8) 'short stay visa' means visa as defined in Article 2(2)(a) of Regulation (EC) No 810/2009;
- (8a) 'national short stay visa' means an authorisation issued by a Member State which does not apply the Schengen acquis in full with a view to an intended stay in the territory of that Member State of a duration of no more than 90 days in any 180-day period;
- (9) ['touring visa' means visa as defined in Article 3(2) of Regulation (EU) No xxx/20xx establishing a touring visa and amending the Convention implementing the Schengen Agreement and Regulations (EC) No 562/2006 and (EC) No 767/2008 [...];
- (9a) 'visa' means short stay visa and touring visa;
- (9b) 'authorised stay' means the exact number of days during which the third country national may legally stay in the territory of Member States, counting from the date of the entry in accordance with the applicable provisions;
- (10) 'carriers' means carriers, as defined in Article 2(15) of Regulation (EU) 2016/399;
- (11) 'Member State responsible' means the Member State which has entered the data in the EES;
- (12) 'verification' means the process of comparing of sets of data to establish the validity of a claimed identity (one-to-one check);
- (13) 'identification' means the process of determining a person's identity through a database search against multiple sets of data (one-to-many check);



- (14) 'alphanumeric data' means data represented by letters, digits, special characters, space and punctuation marks;
- (15) 'fingerprint data' means the data relating to four fingerprints of the index, middle finger, ring finger and little finger from the right hand, where present, and otherwise from the left hand, [...] with sufficient resolution and quality to be used in automatic biometric matching;
- (16) 'facial image' means digital images of the face with sufficient image resolution and quality to be used in automated biometric matching;
- (17) 'biometric data' means fingerprint data and facial image;
- (18) 'overstayer' means a third country national who does not fulfil, or no longer fulfils the conditions relating to the duration of a authorised stay on the territory of the Member States;
- (19) 'eu-LISA' means the European Agency for the operational management of large-scale information systems in the area of freedom, security and justice established by Regulation (EU) No 1077/2011;
- (20) [...];
- (21) 'supervisory authority' means the supervisory authorities established in accordance with Article 28 of Directive 95/46/EC;
- (22) 'national supervisory authority' as regards law enforcement purposes means the supervisory authorities [...] established in accordance with Article 25 of Council Framework Decision 2008/977/JHA;
- ~~(23)~~ [...];

- (24) 'EES data' means all data stored in the Central System in accordance with Articles 13, 14, 15, 16, 17 and 18;
- (25) 'law enforcement' means the prevention, detection or investigation of terrorist offences or other serious criminal offences;
- (26) 'terrorist offences' mean the offences under national law which correspond or are equivalent to those referred to in Articles 1 to 4 of Framework Decision 2002/475/JHA;
- (26a) designated authorities' means authorities which are responsible for the prevention, detection or investigation of terrorist offences or of other serious criminal offences and designated by Member States pursuant to Article 26.
- (27) 'serious criminal offences' means the offences which correspond or are equivalent to those referred to in Article 2(2) of Framework Decision 2002/584/JHA, if they are punishable under national law by a custodial sentence or a detention order for a maximum period of at least three years;
- (28) 'Self Service System' means an automated system as defined in Article 2(23) of Regulation (EU) 2016/399;
- (29) 'e-gate' means an infrastructure as defined in Article 2(24) of Regulation (EU) 2016/399;
- (30) 'Failure To Enrol Rate (FTE)' means the proportion of registrations with insufficient quality of the biometric enrolment;
- (31) 'False Positive Identification Rate (FPIR) ' means the proportion of returned matches which do not belong to the checked traveller;
- (32) 'False Negative Identification Rate (FNIR) ' means the proportion of missed matches during biometric search although the traveller was registered with biometric data.

2. The terms defined in Article 2 of Directive 95/46/EC shall have the same meaning in this Regulation in so far as personal data are processed by the authorities of Member States for the purpose laid down in Article 5 of this Regulation.
3. The terms defined in Article 2 of Framework Decision 2008/977/JHA shall have the same meaning in this Regulation in so far as personal data are processed by the authorities of the Member States for law enforcement purposes.

*Article 3a*

*Use of the EES at external borders and the temporary use of the EES at internal borders*

1. The EES shall be deployed at the external borders of the Member states.
2. The Member States which apply the Schengen acquis in full shall introduce the EES at their internal borders with Member States which do not yet apply the Schengen acquis in full but operate the EES.
- 2a. The Member States which apply the Schengen acquis in full and the Member States which do not yet apply the Schengen acquis in full but operate the EES shall introduce the EES at their internal borders with the Member States which do not yet apply the Schengen acquis in full and do not operate the EES.
- 2b. **Member States which do not yet apply the Schengen acquis in full but operate the EES shall introduce the EES at their internal borders defined under Article 2(1) (b) and (c) of Regulation (EU) 2016/399.**
3.  Holders of a resident permit or a long-stay visa issued by a Member State which does not yet apply the Schengen acquis in full shall have their individual file and entry/exit record created by the Member State which applies the Schengen acquis in full and in which they enter for short stay.

4. During the border checks at internal borders mentioned in paragraph 2 a Member State which applies the Schengen acquis in full shall add the data according to Article 14(2)(d), (e), (f) or (g) to the last relevant Entry/exit record of a third country national subject to visa requirement created by a Member State which does not yet apply the Schengen acquis in full **but operate the EES**. Additional data according to Article 14(2) (a), (b), (c) and 14(3) (a), (b), (c) shall be entered during the border checks at internal borders mentioned in paragraph 2 for the purposes of calculation of the authorised stay based on visa on the territory of Member States which apply the Schengen acquis in full.
5. During the border checks at the internal borders mentioned in paragraph 2a, Member States which apply the Schengen acquis in full and the Member States which do not yet apply the Schengen acquis in full but operate the EES shall create an individual file and an entry/exit record for a third country national which enter for short stay [stay based on touring visa].
6. During the period of application of the EES at the internal borders in accordance with this Article, Articles 17a, 18, 18a and 19a of the Regulation (EC) No 767/2008 shall also be applicable at those internal borders.

#### *Article 4*

##### *Set-up of the EES*

[...] 'eu-LISA' shall, in cooperation with Member States and in accordance with Article 34, develop the EES and ensure its operational management, including the functionalities for processing biometric data referred to in Article 14(1)(f) and Article 15 (1) (b) and (c).

#### *Article 5*

##### *Purpose of the EES*

By recording, storing and providing access to Member States to the data recorded in the EES pursuant to Articles 14 to 18 [...], the objectives of EES shall be:

- (a) to enhance the efficiency of border checks by calculating and monitoring the duration of the authorised stay at entry and exit of third country nationals admitted for a short stay [or on the basis of a touring visa], and with regard to third country nationals subject to visa requirement staying, based on a visa or a national short stay visa, in the Member States which do not yet apply the Schengen acquis in full but operate the EES, by calculating and monitoring only the stay of 90 days in any 180-day period in the territory of the Member States which apply the Schengen acquis in full and in the territory of the Member States which do not yet apply the Schengen acquis in full but operate the EES;
- (b) to assist in the identification of a third country national [...] who does not, or does no longer fulfil the conditions for entry to or for short stay [or stay based on touring visa] on the territory of the Member States;
- (c) to allow to identify and detect overstayers [...] and enable competent national authorities of the Member States to take appropriate measures including to increase the possibilities for return;
- (d) to allow to electronically check refusals of entry in the EES;
- (e) [...]to enable automation of border [...] checks procedure [...]
- (f) to enable [...] visa authorities to have access to information on the lawful use of previous visas,
- (g) to inform third country nationals of the duration of their authorised stay;
- (h) to gather statistics on the entries and exits, refusals of entry and overstays of third country nationals to improve the assessment of the risk of overstays and to support evidence-based Union migration policy making;
- (h1) where relevant, to support Member States in operating their national facilitation programmes, including the examination and decision on applications;

- (i) to combat identity fraud and the misuse of travel documents;
- (j) to contribute to the prevention, detection and investigation of terrorist offences or of other serious criminal offences;
- (k) [...]
- (l) to enable generating information [...] for investigations related to terrorism or other serious criminal offences, [...] including identification of perpetrators, suspects and victims of these offences;
- (m) to facilitate the examination of an application for international protection.

## *Article 6*

### *Technical architecture of the EES*

1. The EES shall be composed of:
  - (a) a Central System;
  - (b) a National Uniform Interface (NUI) in each Member State based on common technical specifications and identical for all Member States enabling the connection of the Central System to the national [...] infrastructures in Member States necessary for border checks.
  - (c) a Secure Communication Channel between the EES Central System and the VIS Central System;
  - (d) a Communication Infrastructure between the Central System and the National Uniform Interfaces.
2. The EES Central System shall be hosted by eu-LISA in its [...] technical sites. It shall provide the functionalities laid down in this Regulation in accordance with the conditions of availability, quality and speed pursuant to Article 34(3).

3. Without prejudice to Commission Decision 2008/602/EC<sup>1</sup>, some hardware and software components of the Communication Infrastructure of the EES shall be shared with the communication infrastructure of the VIS referred to in Article 1(2) of Decision 2004/512/EC. [...] Logical separation of VIS and EES data shall be ensured.

#### *Article 7*

##### *Interoperability with the VIS*

1. eu-LISA shall establish a Secure Communication Channel between the EES Central System and the VIS Central System to enable interoperability between the EES and the VIS. Direct consultation between the systems shall only be possible if both this Regulation and Regulation (EC) No 767/2008<sup>2</sup> provide for it.
2. The interoperability requirement shall enable the border checks authorities using the EES to consult the VIS from the EES in order to:
  - (a) retrieve and import automatically the visa related data directly from the VIS in order to create or update the entry/exit record or the refusal of entry record [...] of a visa holder in the EES in accordance with Articles 13, 14 and 16 of this Regulation and Article 18a of Regulation (EC) No 767/2008;
  - (b) retrieve and import automatically the visa related data directly from the VIS in order to update the entry/exit record [...] in the event that a visa is annulled, revoked or extended in accordance with Article 17 of this Regulation and Articles 13, 14 and 18a of Regulation (EC) No 767/2008;

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<sup>1</sup> Commission Decision 2008/602/EC of 17 June 2008 laying down the physical architecture and requirements of the national interfaces and of the communication infrastructure between the Central VIS and the national interfaces for the development phase (OJ L 194, 23.7.2008, p. 3).

<sup>2</sup>

- (c) verify pursuant to Article 21 of this Regulation and Article 18(2) of Regulation (EC) No 767/2008 the authenticity and validity of the visa or whether the conditions for entry to the territory of the Member States in accordance with Article 6 of Regulation (EU) 2016/399 are fulfilled [...]
- (d) verify at the external borders whether a visa exempt third country national has been previously registered in the VIS in accordance with Article 21 of this Regulation and Article 19a of Regulation (EC) No 767/2008;

where the identity of a visa holder cannot be verified against the EES, verify at the external borders the identity of a visa holder with fingerprints against the VIS in accordance with Article 21 of this Regulation and Article 18(6) of Regulation (EC) No 767/2008.

3. The interoperability requirement shall enable the visa authorities using the VIS to consult the EES from the VIS in order to:

- (a) examine visa applications and adopt decisions relating to those applications in accordance with Article 22 of this Regulation and Article 15(4) of Regulation (EC) No 767/2008;
- (aa) examine national visa applications and adopt decisions relating to those applications by the Member States which do not yet apply Schengen acquis in full **but operate the EES;**
- (b) update automatically the visa related data in the entry/exit record [...] in the event that a visa is annulled, revoked or extended in accordance with Article 17 of this Regulation and Articles 13 and 14 of Regulation (EC) No 767/2008.



## Article 8

### *Access to the EES for entering, amending, deleting and consulting data*

1. Access to the EES for entering, amending, deleting and consulting the data referred to in Articles 13, 14, 15, 16, 17 and 18 shall be reserved exclusively to duly authorised staff of the authorities of each Member State which are competent for the purposes laid down in Articles 21 to 32. That access shall be limited to the extent needed for the performance of the tasks in accordance with this purpose, and proportionate to the objectives pursued.
2. Each Member State shall designate the competent national authorities which shall be [...] border check, visa, immigration, and determining authorities **[as well as the competent authorities referred to in Article 35(1) of Regulation (EU) 604/2013<sup>1</sup>]**, for the purposes of this Regulation. The duly authorised staff shall have access to the EES to enter, amend, delete or consult data. Each Member State shall communicate a list of these authorities to eu-LISA without delay. That list shall specify for which purpose each authority shall have access to the data in the EES.

Within three months after the EES has started operations in accordance with Article 60, a consolidated list of those authorities shall be published in *the Official Journal of the European Union*. Where there are amendments thereto, eu-LISA shall publish an updated consolidated list once a year.

3. The authorities which are entitled to consult or access the data stored in the EES in order to prevent, detect and investigate terrorist offences or other serious criminal offences shall be designated in accordance with the provisions of Chapter IV.

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<sup>1</sup> **Regulation (EU) N° 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person, OJ L 180, 29.6.2013, p. 31-59.**

## Article 9

### General principles

1. Each competent authority authorised to access the EES shall ensure that the use of the EES is necessary, appropriate and proportionate.
2. Each competent authority shall ensure that in using the EES, it does not discriminate against third country nationals on the grounds of sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation and that it fully respects human dignity and the integrity of the person. Particular attention shall be paid to the specific situation of children, the elderly and, persons with a disability. [...]

## Article 10

### *Automated calculator and obligation to inform third country nationals on the remaining authorised stay*

1. The EES shall include an automated calculator that indicates the maximum [...] duration of authorised stay, [...] for third country nationals registered in the EES. [...]

The calculator shall not apply to third country nationals who are [...] members of the family of a Union citizen to whom Directive 2004/38/EC applies or of a national of a third country enjoying the right of free movement under Union law and who do not hold a residence card referred to under Directive 2004/38/EC.

2. The automated calculator shall inform the competent authorities:
  - (a) [...] on entry, of the maximum [...] duration of authorised stay of third country nationals [...] and whether the number of authorised entries of short stay visa issued for [...] single or double entry [...] have been previously used
  - (b) during checks or verifications carried out within the territory of the Member States, of duration of remaining authorised stay or overstay of the third country nationals;

- (c) [...] upon exit, of any overstay of third country nationals [...];
- (d) when examining and deciding on visa applications, of the maximum remaining duration of authorised stay based on intended entry dates.
3. Any third country national shall have the right to ask border check authorities during border checks at entry about the maximum remaining number of days of his/her authorized stay, which shall take into account the number of entries and the length of stay authorised by the visa {or the touring visa}, and be provided with such information by the border check authorities on that occasion."
4. [...] With regard to third country nationals subject to visa requirement staying, based on a visa<sup>1</sup> or a national **short stay** visa, in the Member States which do not yet apply the Schengen acquis in full but operate the EES, the calculator shall **not indicate the authorised stay based on the visa or the national short visa. The calculator shall only indicate the stay of 90 days in any 180-day period in the territory of the Member States which apply the Schengen acquis in full and in the territory of the Member States which do not yet apply the Schengen acquis in full but operate the EES.**
5. The automated calculator shall apply also for **short** stay authorised by a visa with limited territorial validity issued on the basis of Article 25(1)(b) of Regulation (EC) No 810/2009, the third country national may stay for the period authorised by his/her visa, irrespective of the fact that his/her cumulative stay exceeds 90 days within any 180-days.

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<sup>1</sup> **Decision No 565/2014/EU of the European Parliament and of the Council of 15 May 2014 introducing a simplified regime for the control of persons at the external borders based on the unilateral recognition by Bulgaria, Croatia, Cyprus and Romania of certain documents as equivalent to their national visas for transit through or intended stays on their territories not exceeding 90 days in any 180-day period and repealing Decisions No 895/2006/EC and No 582/2008/EC.**

## Article 11

### Information mechanism

1. The EES shall include a mechanism that shall automatically identify which entry/exit records do not have exit data immediately following the date of expiry of the duration of authorised stay and identify records for which the maximum authorised stay allowance [...] was [...] exceeded.
  - 1a. For the third country nationals who perform their border crossing on the basis of valid Facilitated Transit Document (FTD) issued in accordance with Regulation (EC) 693/2003, the EES shall include a mechanism that shall automatically identify which entry/exit records do not have **exit** data immediately following the time of expiry of the duration of authorised stay and identify records for which the maximum period of authorised stay allowance has been exceeded.
2. A list generated by the system containing the data referred to in Article 14 and 15 of all identified overstayers shall be available to the designated competent national authorities according to Article 8(2) in order for them to adopt the appropriate measures including to detect the overstayer and where possible and applicable contributing to the return of the overstayer.

## Article 12

### Web service

1. In order to enable third country nationals to verify at any moment the remaining [...] maximum number of days of authorised stay, a secure internet access to a web service hosted by eu-LISA in its-[...] technical sites shall allow those third country nationals to provide the type, number and three letter code of the issuing country of the travel document [...] together with the anticipated entry and exit dates or for third country nationals who are within the territory of the Member States, the intended exit date. On that basis, the web service shall provide them with an OK/NOT OK answer, including information on the maximum remaining number of days of authorised stay. The web service shall use a separate read-only database updated on a daily basis via a one-way extraction of the minimum necessary subset of EES data.

**The web service shall not provide information regarding the authorised stay based on the visa or the national short visa in the territory of a Member State which does not yet apply the Schengen acquis in full but operate the EES.**

2. Carriers may use the secure internet access to the web service referred to in paragraph 1 to verify whether or not third country nationals holding a short stay visa issued for single or double entry [...] have already used the short stay visa. The carrier shall provide the data listed in Article 14([...]2)(d). The web service shall on that basis provide the carriers with an OK/NOT OK answer. Carriers may store the information sent and the answer received. The OK/NOT OK answer can not be regarded as a decision to authorise or refuse entry in accordance with Regulation (EU) 2016/399.
3. Detailed rules on the conditions for operation of the web service and the data protection and security rules applicable to the web service shall be adopted in accordance with the examination procedure referred to in Article 61(2).

## **CHAPTER II**

### ***Entry and use of data by competent [...] authorities***

#### *Article 13*

##### *Procedures for entering data in the EES*

1. Border check authorities shall verify, in accordance with Article 21, whether a previous individual file has been created in the EES for the third country national as well as [...] his/her identity. Where a third country national uses a self-service system for pre-enrolment of data or for the performance of border checks [...], a verification may be carried out through the self service system.

2. Where a previous individual file has been created, the border check authority shall, if necessary, update the individual file data, referred to in Articles 14, 15 and 16 as applicable, enter an entry or exit data to the entry/exit record [...] in accordance with Articles 14 and 15 or, where applicable, a refusal of entry record in accordance with Article 16. That record shall be linked to the individual file of the third country national concerned. Where applicable, the data referred to in Article 17(1), (1a), [...] (3) and (4) shall be added to the entry/exit record of the third country national concerned. The different travel documents and identities used legitimately by a third country national shall be added to the third country national's individual file. Where a previous individual file has been registered and the third country national presents a travel document which differs from the one which was previously registered, the data referred under Article 14(1)(f) and Article 15(1) (b) shall also be updated [...].
3. Where it is necessary to create or update the [...] entry/exit records data of a visa holder, the border check authorities may retrieve and import the data provided for in Article 14([...]2) (c), (d), (e), (f) and [g] directly from the VIS in accordance with Article 7 of this Regulation and Article 18a of Regulation (EC) No 767/2008.
4. In the absence of a previous registration of a third country national in the EES, the border check authority shall create the individual file of the person by entering the data referred to in Articles 14(1), (6), 15(1) and 16(1) as applicable.
5. Where a third country national uses a self-service system for pre-enrolment of data, Article 8c of Regulation (EU) 2016/399 shall apply. In that case, the third country national may pre-enrol the individual file data or, if applicable, the data in the entry/exit record that needs to be updated. The data shall be confirmed by the border check authorities [...] when the decision to authorise or to refuse entry has been taken in accordance with Regulation (EU) 2016/399. The verification referred to in paragraph 1 of this Article shall be carried out through the self service system. The data listed in Article 14([...]2) (c), (d), (e), (f) and [g] may be retrieved and imported automatically [...] from the VIS.

6. Where a third country national uses a self-service system for the performance of the border checks, Article 8d of Regulation (EU) 2016/399 shall apply. In that case, the verification referred to in paragraph 1 of this Article shall be carried out through the self service system.
7. Where a third country national uses an e-gate for crossing the external border, Article 8d of Regulation (EU) 2016/399 shall apply. In that case, the corresponding registration of the entry/exit record and the linking of that record to the concerned individual file shall be carried out through the e-gate.
8. Where it is necessary to create an individual file or to update the facial image referred to in Article 14(1)(f) and Article 15(1)(b), the facial image shall be taken live and where this is not possible [...] extracted electronically from the electronic Machine Readable Travel Documents (eMRTD) and inserted into the individual file. after electronic verification [...] that the facial image recorded in the chip of the eMRTD corresponds to the live facial image of the concerned third country national.
9. Without prejudice to Article 18 of this Regulation and Article 12(3) of Regulation (EU) 2016/399, if the authorised stay of a third country national who is present on the territory of a Member State starts directly after the stay based on residence permit or long-stay visa and no individual file has been created, the competent authorities according to Article 8(2) may create an individual file and the entry/exit record by entering the data referred to in Articles 14(1), (2) and (6) and 15(1). Instead of the data referred to in Article 14(2)(a), they shall insert the date of start of the authorised stay and, instead of the data in Article 14(2)(b), they shall insert the authority that authorised the authorised stay.

*Article 14*

*Personal data for [...] third country national subject to a visa requirement to cross the external borders*

1. The border checks authority shall create the individual file of the [...] third country national subject to a visa requirement to cross the external borders by entering the following data:
  - (a) surname (family name); first name(s) (given names); date of birth; nationality or nationalities; sex;
  - (b) type, number and three letter code of the issuing country of the travel document or documents;
  - (c) the date of expiry of the validity of the travel document(s);
  - ~~(d)~~ [...]
  - ~~(e)~~ [...]
  - (f) the facial image, where possible taken live [...], and where this is not possible, [...] extracted electronically from the eMRTD;
  
2. On each entry of the [...] third country national subject to a visa requirement to cross the external borders, the following data shall be entered in an entry/exit record. That record shall be linked to the individual file of that third country national using the individual reference number created by the EES upon creation of that file:
  - (a) date and time of the entry;
  - (b) the border crossing point and authority that authorised the entry;



- (c) if applicable, the status of the person indicating that it is a third country national who is member of family of a Union citizen to whom Directive 2004/38/EC applies or a national of a third country enjoying the right of free movement under Union law and who do not hold a residence card referred to under Directive 2004/38/EC.
- (d) the short stay visa sticker number, including the three letter code of the issuing Member State, the type of short stay visa, the date of end of maximum duration of the stay as authorised by the short stay visa which needs to be updated at each entry and the date of expiry of the validity of the short stay visa, if applicable;
- (e) at the first entry on the basis of the short stay visa, the number of entries and the duration of stay as authorised by the short stay visa as indicated on the short stay visa sticker;
- (f) if applicable, the information indicating that the visa has been issued with limited territorial validity, on the basis of Article 25(1)(b) of the Regulation (EC) 810/2009;
- (g) [the touring visa sticker number of the touring visa, the type of touring visa and the date of expiry of the validity of the touring visa, if applicable.]

Member States which do not yet apply the Schengen acquis in full, but operate the EES shall only register the data referred to in points (a), (b) and (c).

3. On each exit, the following data shall be entered in the entry/exit record linked to the individual file of that [...] third country national subject to a visa requirement to cross the external borders:

- (a) date and time of the exit;
- (b) the border crossing point of the exit.

(c) Where a third country national subject to a visa requirement to cross the external borders uses a different visa than the visa recorded in the last entry record, the data of the entry/exit record listed in paragraph 2(d), (e), (f) and [(g)] shall be updated accordingly.

Member States which do not yet apply the Schengen acquis in full, but operate the EES shall only register the data referred to in points (a) and (b).

4. Where there is no exit data immediately following the date of expiry of the [...] duration of authorised stay, the entry/exit record shall be identified with a mark or flag by the system and the data of the [...] third country national subject to a visa requirement to cross the external borders identified as an overstayer shall be entered into the list referred to in Article 11.
5. In order to create or update the [...] entry/exit record of a [...] third country national subject to a visa requirement to cross the external borders the data provided for in paragraph 2 (c), (d), (e), (f) and [(g)] may be retrieved and imported automatically [...] from the VIS by the border check authority in accordance with Article 18a of Regulation (EC) No 767/2008.
6. Where relevant, Member States shall insert a notification in the individual file if the third country national benefits from their national facilitation programme in accordance with Article 8e of Regulation (EU) 2016/399 specifying the Member State's national facilitation programme concerned. The notification shall only be available to the Member State implementing such a programmes and to those Member States having concluded an agreement with the Member State which granted the access as referred to under Article 8e(4) of Regulation (EU) 2016/399.

7. The specific provisions set out in Annex II shall apply for third country nationals who perform their border crossing on the basis of a valid Facilitated Transit Document (FTD) issued in accordance with Regulation (EC) 693/2003.

*Article 15*

*Personal data for third country nationals exempt from the visa obligation*

1. [...] The border check authority shall [...] create the individual file of third country nationals exempt from visa obligation by entering following data
- a) [...] provided for in Article 14(1) (a), (b) and (c) [...];
  - b) the facial image, where possible taken live, and where this is not possible, extracted electronically from the eMRTD;
  - c) [...] fingerprint data[...];
  - d) where relevant data provided for in Article 14(6).
- 1a. For third country nationals exempt from the visa obligation, Articles 14(2)(a), (b) and (c), 14(3) (a) and (b) and 14(4) shall apply.
2. Children under the age of 12 shall be exempt from the requirement to give fingerprints [...].
3. Persons for whom fingerprinting is physically impossible shall be exempt from the requirement to give fingerprints [...].

However, where the physical impossibility is of a temporary nature, this fact shall be recorded in the system and the person shall be required to give the fingerprints at the exit or the subsequent entry. The border check authorities shall be entitled to request further clarification on the grounds for the temporary impossibility to provide fingerprints. This information shall be deleted from the system once the fingerprints have been given.

Member States shall ensure that appropriate procedures guaranteeing the dignity of the person are in place in the event of difficulties encountered in capturing fingerprints.

4. Where the person concerned is exempt from the requirement to give fingerprints [...] pursuant to paragraphs 2 or 3, the specific data field shall be marked as 'not applicable'. [...]

#### *Article 16*

##### *Personal data for third country nationals who have been refused entry*

1. Where a decision has been taken by the border check authority, in accordance with Article 14 of Regulation (EU) 2016/399 and Annex V thereto, to refuse the entry of a third country national referred to in Article 2(2) of this Regulation to the territories of the Member States, and where no previous file has been registered in the EES for that third country national the border check authority shall create an individual file in which it shall enter:
  - (a) the data required pursuant to Article 14(1) and, where relevant, the data referred to under Article 14(6) in the case of [...] third country nationals subject to a visa requirement to cross the external borders [...]
  - (b) the data required pursuant to Article 15(1) in the case of visa exempt third country nationals and in the case of a third country national subject to a visa requirement to cross the external borders if the border check authority has verified that the third country national is not registered in the VIS.

If a third country national refuse to provide biometric data, border check authority shall create individual file without biometric data. If the third country national possesses an eMRDT the facial image shall be extracted from this eMRDT.

2. For both third country nationals subject to a visa requirement to cross the external borders [...] and visa exempt third country nationals the following data shall be entered in a separate refusal of entry record:

- (a) the date and time of refusal of entry,
- (b) the border crossing point,
- (c) the authority that refused the entry,
- (d) the letter(s) corresponding to the reason(s) for refusing entry, in accordance with Annex V, Part B of Regulation (EU) 2016/399.

In addition, for third country nationals subject to a visa requirement to cross the external borders the data provided for in Article 14(2)(d), (e), (f) and [(g)] shall be entered in the refusal of entry record.

In order to create or update the refusal of entry record of third country nationals subject to a visa requirement to cross the external borders, the data provided for in Article 14(2)(d), (e), (f) and[(g)] may be retrieved and imported automatically from the VIS into the EES by the competent border checks authority in accordance with Article 18a of Regulation (EC) No 767/2008.

3. Where a previous individual file already exists in the EES the data provided for in paragraph 2 shall be linked [...] to [...] this file.

## Article 17

*Data to be added where an authorisation for short [...] stay is revoked, annulled or extended*

1. Where a decision has been taken to revoke or annul an authorisation for short stay [...] or a visa or to extend the duration of the authorised stay or visa, the competent authority that has taken the decision shall add the following data to the latest relevant entry/exit record [...]:
  - (a) the status information indicating that the authorisation for short [...] stay or the visa has been revoked or annulled or that the duration of the authorised stay or the visa has been extended;
  - (b) the identity of the authority that revoked or annulled the authorisation for short [...] stay or the visa or extended the duration of the authorised stay or visa;
  - (c) the place and date of the decision to revoke or annul the authorisation for short [...] stay or the visa or to extend the duration of the authorised stay or the visa;
  - (d) where applicable the new visa sticker number including the three letter code of the issuing country;
  - (e) if possible the period of the extension of the [...] duration of authorised stay;
  - (f) if possible the new expiry date of the [...] authorised stay or the visa.
- 1a. Where the duration of authorised stay have been extended according a bilateral agreement according the Article 20(2) of the Convention implementing Schengen Agreement the competent authority shall add the data regarding the period of the extension of the duration of authorised stay to the latest relevant entry/exit record.
2. Where a decision has been taken to annul, revoke or extend a visa, the visa authority which has taken the decision shall immediately retrieve and import automatically the data provided for in paragraph 1 of this Article from the VIS directly into the EES in accordance with Articles 13 and 14 of Regulation (EC) No 767/2008.

3. The entry/exit record shall indicate the ground(s) for revocation or annulment of the [...] authorised stay, which shall be:
  - (a) [...] a return decision adopted pursuant to Directive 2008/115/EC<sup>1</sup>;
  - (b) any other decision taken by the competent authorities of the Member State, in accordance with national legislation, resulting in the return or removal or departure of the third country national who does not fulfil or no longer fulfils the conditions for the entry into or for the authorised stay in the territory of the Member States.
4. The entry/exit record shall indicate the grounds for extending the duration of an authorised stay.
5. When a person has departed or has been removed from the territories of the Member States pursuant to a decision as referred to in paragraph 3, the competent authority shall enter the data in accordance with Article 13(2) in the entry/exit record of that specific entry.

#### *Article 18*

*Data to be added in case of rebuttal of the presumption that the third country national does not fulfil the conditions of duration of authorised stay in accordance with Article 12 of Regulation (EU) 2016/399*

Without prejudice to Article 20, where a third country national present on the territory of a Member State [...] has no individual file created in the EES or there is no last relevant entry/exit record [...], the competent authorities may presume that the third country national does not fulfil or no longer fulfils the conditions relating to duration of authorised stay within [...] the territory of the Member States.

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<sup>1</sup> Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (OJ L 348, 24.12.2008, p. 98).

In addition, without prejudice to Article 20, the competent authorities may presume that a third country national did not fulfil the conditions related to the duration of the previous authorised stay if during the performance of the border checks on entry it results that the previous entry/exit record of the third country national does not contain an exit date.

In that case Article 12 of Regulation (EU) 2016/399 shall apply and if that presumption is rebutted by proof that the third country national concerned has respected the conditions relating to the condition of authorised [...] stay, the competent authorities shall create an individual file for that third country national in the EES if necessary, or update the latest entry/exit record by entering the missing data in accordance with Articles 14 and 15 or delete an existing file where Article 32 applies.

#### *Article 19*

##### *Fall-back procedures in case of technical impossibility to enter data or failure of the EES*

1. In the event of technical impossibility in entering data in the Central System or in the event of a failure of the Central System, the data referred to in Articles 14, 15, 16, 17 and 18 shall be temporarily stored in the National Uniform Interface as provided for in Article 6. If this is not possible, the data shall be temporarily stored locally. In [...] all cases, the data shall be entered into the Central System of the EES as soon as the technical impossibility or failure has been remedied. The Member States shall take the appropriate measures and deploy the required infrastructure, equipment and resources to ensure that such temporary local storage can be carried out at any time and for any of their border crossing points.
  
2. In the exceptional situation where there will be no technical possibility to register in the Central System, in the National Uniform Interface and local electronic temporary storage is technically impossible, Member States shall store manually the data referred to in articles 14, 15, 16, 17 and 18 with the exception of the biometric data and in addition affix an entry or exit stamp in the travel document of a third country national. These manually stored data shall be entered in the system as soon as possible.



3. The EES shall indicate that data referred to in Articles 14, 15, 16, 17 and 18 were entered during fall-back procedure and that the individual file created according to paragraph 2 is missing biometric data.

#### *Article 20*

##### *Transitional period and transitional measures*

1. For a period of six months after the EES has started operations, in order to verify at entry that the third country national has not exceeded the number of entries authorised by the short stay visa issued for single or double entry [...] and to verify at entry and at exit that third country nationals [...] have not exceeded the duration [...] of the maximum authorised stay, the competent border check authorities shall take into account the stays in the territories of the Member States during the 180 days preceding the entry or the exit by checking the stamps in the travel documents in addition to the entry/exit data recorded in the EES.
2. Where a third country national has entered the territory of the Member States and has not yet exited it before the EES has started operations, an individual file shall be created and the date of that entry as stamped in the passport shall be entered in the entry/exit record in accordance with Article 14(2) when the third country national exits. This rule shall not be limited to the six months after the EES has started operations as referred to in paragraph 1. In case of discrepancy between the entry stamp and the data recorded in the EES, the stamp shall prevail.

## Article 21

### *Use of data for verification at the external borders*

1. Border check authorities shall have access to the EES for verifying the identity and previous registration of the third country national, for updating the data registered into the EES where necessary and for consulting the data to the extent required for the performance of border check [...] tasks.
2. Pursuant to paragraph 1, the border check authorities shall have access to search with the data referred to in Article 14(1)(a), (b) and (c) and Article 15(1)(a).

In addition, for third country nationals who are subject to a visa requirement to cross the external borders, the border check authorities [...] shall where necessary launch a search in the VIS directly from the EES using the same alphanumeric data for the purposes of carrying out the consultation of the VIS for verification at external borders in accordance with Article 18 of Regulation (EC) No 767/2008.

If the search in the EES with those data indicates that data on the third country national are recorded in the EES, the border check authorities shall compare the live facial image of the third country national with the facial image referred to in Article 14(1)(f) and Article 15(1)(b) [...] or the border check authorities shall, in the case of visa exempt third country nationals, proceed to a verification of fingerprints against the EES and in the case of [...] third country nationals subject to a visa requirement to cross the external borders, proceed to a verification of fingerprints directly against the VIS in accordance with Article 18 of Regulation (EU) No 767/2008. For the verification of fingerprints against the VIS for visa holders, the border check authorities may launch the search in the VIS directly from the EES as provided in Article 18(6) of Regulation (EC) No 767/2008.

If the verification of the facial image fails, the verification shall be carried out using fingerprints and vice versa.

3. If the search with the data set out in paragraph 2 indicates that data on the third country national are recorded in the EES, the [...] border check authority shall be given access to consult the data of the individual file of that third country national and the entry/exit record(s) or refusal of entry record(s) linked to it.
4. Where the search with the alphanumeric data set out in paragraph 2 indicates that data on the third country national are not recorded in the EES, where a verification of the third country national pursuant to paragraph 2 of this Article fails or where there are doubts as to the identity of the third country national, the border check authorities shall have access to data for identification in accordance with Article 25.

In addition, the following provisions shall apply:

- (a) for third country nationals who are subject to a visa requirement to cross the external borders, if the search in the VIS with the data referred to in Article 18(1) of Regulation (EC) No 767/2008 indicates that that third country national is recorded in the VIS, a verification of fingerprints against the VIS shall be carried out in accordance with Article 18 (5) of Regulation (EC) No 767/2008. For this purpose, the [...] border check authority may launch a search from the EES to the VIS as provided for in Article 18(6) of Regulation (EC) No 767/2008. In circumstances where a verification of the person pursuant to paragraph 2 of this Article failed, the border check authorities shall access the VIS data for identification in accordance with Article 20 of Regulation (EC) No 767/2008.
- (b) for third country nationals who are not subject to a visa requirement to cross the external borders and who are not found in the EES further to the identification run in accordance with Article 25, the VIS shall be consulted in accordance with Article 19a of Regulation (EC) No 767/2008. The competent border check authority may launch a search from the EES to the VIS as provided for in Article 19a of Regulation (EC) No 767/2008."

5. For third country nationals whose data are already recorded in the EES but who had their individual file created in the EES by a Member State which does not yet apply the Schengen acquis in full, but operates the EES [...], the border check authorities shall consult the VIS in accordance with point(a) or (b) of paragraph 4 of this Article when, for the first time after the creation of the individual file, the third country national intends to cross the internal borders according to Article 3a(2) or external borders of a Member State which applies the Schengen acquis in full [...].

### CHAPTER III

#### Entry of data and use of the EES by other authorities

##### *Article 22*

##### *Use of the EES for examining and deciding on visa [...]*

1. Visa authorities shall consult the EES for examining visa applications and adopting decisions relating to those applications, including decisions to annul, revoke or extend the period of validity of an issued visa, in accordance with the relevant provisions of Regulation (EU) No 810/2009 of the European Parliament and of the Council.<sup>1</sup>

In addition, visa authorities of a Member State which does not yet apply Schengen acquis in full, but operate the EES, shall consult EES when examining national short stay visa applications and adopting decisions relating to those applications, including decisions to annul, revoke or extend the period of validity of an issued national short stay visa.

2. The visa authority shall be given access to search the EES directly from the VIS with one or several of the following data:
- (a) the data referred to in Article 14(1)(a), (b) and (c) and 15(1)(a);
  - (b) the short stay visa sticker number, including the three letter code of the issuing Member State referred to in Article 14(4)(d);

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<sup>1</sup> Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code) (OJ L 243, 15.9.2009, p. 1)

(c) the biometric data as referred to in Articles 14(1)(f) and 15(1) (b) and (c).

(d) [the touring visa sticker number of the touring visa referred to in Article 14(2)(g)];

3. If the search with the data set out in paragraph 2 indicates that data on the third country national are recorded in the EES, visa authorities shall be given access to consult the data of the individual file of that third country national and the entry/exit records and also refusals of entry record linked to it. Visa authorities shall be given access to consult the automated calculator in order to check the maximum remaining duration of an authorised stay. They shall also be able to consult the EES and its calculator when examining and taking decision on a new visa application, so as to automatically establish the maximum duration of authorised stay.

### *Article 23*

#### *Use of the EES for examining applications for access to national facilitation programmes*

1. The competent authorities referred to in Article 8e of Regulation (EU) 2016/399 shall consult the EES for the purposes of the examination of applications for access to national facilitation programmes referred to in that Article as regards the use of the Entry/Exit System and the adoption of decisions relating to those applications, including decisions to refuse, revoke or extend the period of validity of access to the national facilitation programmes in accordance with that Article.
2. The competent authority shall be given access to search with one or several of the data referred to in Article 14(1)(a), (b), (c), and (f) and 15 (1) (a), (b) and (c).
3. If the search with the data set out in paragraph 2 indicates that data on the third country national are recorded in the EES, the competent authority shall be given access to consult the data of the individual file of that third country national and the entry/exit records and also refusals of entry records linked to it.

## Article 24

### *Access to data for verification within the territory of the Member States*

1. For the purpose of verifying the identity of the third country national and/or checking or verifying if the conditions for entry to or authorised stay on the territory of the Member States are fulfilled, the immigration authorities of the Member States [...] shall have access to search with the data referred to in Article 14(1)(a), (b) [...] (c) and 15(1)(a).

If the search indicates that data on the third country national are recorded in the EES, the immigration [...] authorities may [...] compare the live facial image of the third country national with the facial image referred to in Article 14(1)(f) and 15(1)(b) [...] or the immigration [...] authorities may [...] verify [...] the fingerprints of visa exempt third country nationals in the EES and of [...] third country nationals subject to a visa requirement to cross the external borders in the VIS in accordance with Article 19 of Regulation (EC) No 767/2008.

2. If the search with the data set out in paragraph 1 indicates that data on the third country national is recorded in the EES, the immigration [...] authority shall be given access to consult the data of the individual file of that person, [...] the entry/exit record(s), the automated calculator and refusals of entry record(s) linked to it.
3. Where the search with the data set out in paragraph 1 indicates that data on the third country national are not recorded in the EES, where verification of the third country national fails or where there are doubts as to the identity of the third country national, the [...] immigration authorities shall have access to data for identification in accordance with Article 25.

## Article 25

### Access to data for identification

1. The border check authorities or immigration authorities shall have access to search with the biometric data of third country nationals referred to in Articles 14(1)(f) and 15(1) (b) and (c), for the sole purpose of identifying any third country national who may have been registered previously in the EES under a different identity or who does not or no longer fulfils the conditions for entry or, for authorised stay on the territory of the Member States. [...]

Where the search with the data referred to in Articles 14(1)(f) and 15(1) (b) and (c) indicates that data on that third country national are not recorded in the EES, access to data for identification shall be carried out in the VIS in accordance with Article 20 of Regulation (EC) No 767/2008. At external borders, prior to any identification against the VIS, the competent authorities shall first access the VIS in accordance with Articles 18 or 19a of Regulation (EC) No 767/2008.

Where the fingerprints of that third country national cannot be used or the search with the fingerprints [...] has failed, the search shall be carried out with the all or some of the data referred to in Articles 14(1)(a), (b), (c), and 15(1)(a).

2. If the search with the data set out in paragraph 1 indicates that data on the third country national are recorded in the EES, the competent authority shall be given access to consult the data of the individual file, [...] the linked entry/exit records and refusal of entry records.

Article 25a

Access to data for examining the application for international protection

1. For the sole purpose of facilitation of examining an application for international protection, the determining authorities shall have access to search the EES with the data referred to in Article 14(1) and 15 (1) (a), (b),(c).
2. If the search with the data listed in paragraph 1 indicates that the data of the third country national is recorded in the EES, the competent determining authorities shall be given access to consult **the data referred to in Article 14(1) and in Article 15(1)(a), (b), (c) and, for third country nationals subject to a visa requirement to cross the external border and third country nationals exempt from visa obligation, the data referred to in Article 14(2), (3) (a), (b) and (4)** for the sole purpose referred to in paragraph 1.

[Art. 25b

Access to data for determining the responsibility for asylum applications

1. **For the sole purpose of determining the Member State responsible for an application for international protection, the competent authorities referred to in Article 35(1) of Regulation (EU) 604/2013 shall have access to search in the EES with the data referred to in Art. 14(1) and Art. 15(1)(a), (b) and (c).**
2. **If the search with the data listed in paragraph 1 indicates that the data of a third country national is recorded in the EES, the competent authority of the respective Member State referred to in Article 35(1) of Regulation (EU) 604/2013 shall be given access to consult the data referred to in Article 14(1), Article 15(1)(a), (b) and (c) and, for third country nationals subject to a visa requirement to cross the external border and for third country nationals exempt from visa obligation, the data referred to in Article 14(2)(a) and (b) for the sole purpose referred to in paragraph 1.]**



## CHAPTER IV:

### Procedure and conditions for access to the EES for law enforcement purposes

#### Article 26

##### *Member States' designated [...] authorities*

1. Member States shall designate the [...] authorities referred to under Article 3(1)(26a) which are entitled to consult the data stored in the EES in order to prevent, detect and investigate terrorist offences or other serious criminal offences.
2. Each Member State shall keep a list of the designated authorities. Each Member State shall notify [...] to eu-LISA and the Commission of its designated authorities and may at any time amend or replace its notification. [...]
3. Each Member State shall designate a central access point which shall have access to the EES. [...]. The central access point shall [...] ensure that the conditions to request access to the EES laid down in Article 29 of this Regulation are fulfilled.

The designated authority and the central access point may be part of the same organisation if permitted under national law. [...] The central access point shall act independently of the designated authorities when performing its tasks under this Regulation. The central access point shall be separate from the designated authorities and shall not receive instructions from them as regards the outcome of the verification.

Member States may designate more than one central access point to reflect their organisational and administrative structure in the fulfilment of their constitutional or legal requirements.

4. Each Member State shall notify [...] to eu-LISA and the Commission of its central access point and may at any time amend or replace its notification [...].

5. At national level, each Member State shall keep a list of the operating units within the designated authorities that are authorised to request access to data stored in the EES through the central access point(s).
6. Only duly empowered staff of the central access point(s) shall be authorised to access the EES in accordance with Articles 28 and 29.

#### *Article 27*

##### *Europol*

1. Europol shall designate an authority which is authorised to request access to the EES through its designated central access point in order to prevent, detect and investigate terrorist offences or other serious criminal offences. The designated authority shall be an operating unit of Europol.
2. Europol shall designate a specialised unit with duly empowered Europol officials as the central access point. The central access point shall verify that the conditions to request access to the EES laid down in Article 30 are fulfilled.

The central access point shall act independently when performing its tasks under this Regulation and shall not receive instructions from the designated authority referred to in paragraph 1 as regards the outcome of the verification.

#### Article 28

##### *Procedure for access to the EES for law enforcement purposes*

1. The operating units referred to in Article 26(5) shall submit a reasoned electronic or written request to the central access points referred to in Article 26(3) for access to data stored in the EES. Upon receipt of a request for access, the central access point(s) shall verify whether the conditions for access referred to in Article 29 are fulfilled. If the conditions for access are fulfilled, the duly authorised staff of the central access point(s) shall process the requests. The EES data accessed shall be transmitted to the operating units referred to in in Article 26(5) in such a way as to not compromise the security of the data.

2. [...] Where there is a need to prevent an imminent danger associated with a terrorist offence or another serious criminal offence, the central access point(s) shall process the request immediately and shall only verify ex post whether all the conditions of Article 29 are fulfilled, including whether an exceptional case of urgency actually existed. The ex post verification shall take place without undue delay after the processing of the request.
3. Where an ex post verification determines that the access to EES data was not justified, all the authorities that accessed such data shall erase the information accessed from the EES and shall inform the central access points of the erasure.

#### Article 29

##### *Conditions for access to EES data by designated authorities of Member States*

1. Designated authorities may access the EES for consultation if all of the following conditions are met:
  - (a) access for consultation is necessary for the purpose of the prevention, detection or investigation of a terrorist offences or another serious criminal offence, thus making a search of the database proportionate if there is an overriding public security concern;
  - (b) access for consultation is necessary in a specific case;
  - (c) reasonable grounds exist to consider that the consultation of the EES data may [...] contribute to the prevention, detection or investigation of any of the criminal offences in question, in particular where there is a substantiated suspicion that the suspect, perpetrator or victim of a terrorist offence or other serious criminal offence falls under a category covered by this Regulation;

2. The access to the EES as a criminal identification tool for the purpose of identifying an unknown suspect, perpetrator or suspected victim of a terrorist offence or other serious criminal offence shall be allowed when the conditions listed in paragraph 1 are met and the following additional conditions are met:

- (a) a prior search has been conducted in national databases [...]
- (b) in the case of searches with fingerprints, a prior search has been conducted [...] in the automated fingerprint verification system of the other Member States under Decision 2008/615/JHA where comparisons of fingerprints are technically available.

However, that prior search does not have to be conducted where there are reasonable grounds to believe that a comparison with the systems of the other Member States would not lead to the verification of the identity of the data subject **or where there is a need to prevent an imminent danger associated with a terrorist offence or another serious criminal offence**. Those reasonable grounds shall be included in the electronic or written request for comparison with EES data sent by the **operational unit [...]** to the central access point(s).

Since fingerprint data of [...] third country nationals subject to a visa requirement to cross the external borders are only stored in the VIS, a request for consultation of the VIS on the same data subject may be submitted in parallel to a request for consultation of the EES in accordance with the conditions laid down in Decision 2008/633/JHA provided the searches carried out in accordance with points(a) and (b) of the first subparagraph did not lead to the verification of the identity of the data subject.

3. The access to the EES as a criminal intelligence tool to consult the travel history or the periods of authorised stay on the territory of the Member States [...] of a known suspect, perpetrator or suspected victim of a terrorist offence or other serious criminal offence shall be allowed when the conditions listed in paragraph 1 are met. [...]

4. Consultation of the EES for identification shall be limited to searching in the [...] individual file with any of the following EES data:
- (a) Fingerprints [...] of visa exempt third country nationals or of holders of a Facilitated Transit Document (FTD) issued in accordance with Regulation (EC) 693/2003. In order to launch this consultation of the EES, latent fingerprints may be used and may therefore be compared with the fingerprints stored in the EES;
  - (b) Facial image.

Consultation of the EES, in case of a hit, shall give access to any other data taken from the individual file as listed in Article 14(1), 14(6), [...] Article 15(1) and Article 16(1).

5. Consultation of the EES for the travel history of the third country national concerned shall be limited to searching with any of the following EES data in the individual file, [...] in the entry/exit records **or in the refusal of entry record:**
- (a) Surname(s) (family name);, first name(s) (given names);, date of birth, nationality or nationalities and/or sex;
  - (b) Type and number of travel document or documents, three letter code of the issuing country and date of expiry of the validity of the travel document;
  - (c) Visa sticker number and the date of expiry of the validity of the visa;
  - (d) Fingerprints. In order to launch this consultation of the EES, latent fingerprints may be used and may therefore be compared with the fingerprints stored in the EES. [...]
  - (e) Facial image;
  - (f) Date and time of entry, [...] authority that authorised the entry and entry border crossing point;
  - (g) Date and time of exit and exit border crossing point.

Consultation of the EES shall, in the event of a hit, give access to the data listed in this paragraph as well as to any other data taken from the individual file, [...] the entry/exit records and refusal of entry records including data entered in respect of revocation or extension of authorised stay in accordance with Article 17.

### *Article 30*

#### *Procedure and conditions for access to EES data by Europol*

1. Europol shall have access to consult the EES where all the following conditions are met:
  - (a) the consultation is necessary to support and strengthen action by Member States in preventing, detecting or investigating terrorist offences or other serious criminal offences falling under Europol's mandate, thus making a search of the database proportionate if there is an overriding public security concern;
  - (b) the consultation is necessary in a specific case;
  - (c) reasonable grounds exist to consider that the consultation may substantially contribute to the prevention, detection or investigation of any of the criminal offences in question, in particular where there is a substantiated suspicion that the suspect, perpetrator or victim of a terrorist offence or other serious criminal offence falls under a category covered by this Regulation.
2. The conditions laid down in Article 29 (2 3) to (5) shall apply accordingly.
- 2a. In addition, the access to the EES as a criminal identification tool for the purpose of identifying an unknown suspect, perpetrator or suspected victim of a terrorist offence or other serious criminal offence shall be allowed only if prior consultation of data stored in any information processing systems that are technically and legally accessible by Europol did not lead to the establishment of the identity of the data subject. Since fingerprint data of visa holding third country nationals are only stored in the VIS, a request for consultation of the VIS on the same data subject may be submitted in parallel to a request for consultation of the EES. The consultation of the VIS shall be carried out in accordance with the conditions laid down in Decision 2008/633/JHA.

3. Europol's designated authority may submit a reasoned electronic request for the consultation of all data or a specific set of data stored in the EES to the Europol central access point referred to in Article 27. Upon receipt of a request for access the Europol central access point shall verify whether the conditions for access referred to in paragraphs 1 and 2 are fulfilled. If all conditions for access are fulfilled, the duly authorised staff of the central access point(s) shall process the requests. The EES data accessed shall be transmitted to the operating units referred to in Article 27 (1) in such a way as not to compromise the security of the data.
4. The processing of information obtained by Europol from consultation with EES data shall be subject to the authorisation of the Member State of origin. That authorisation shall be obtained via the Europol national unit of that Member State.

## **CHAPTER V**

### **Retention and amendment of the data**

#### *Article 31*

##### *Retention period for data storage*

- 1 Each entry/exit record or refusal of entry record linked to an individual file shall be stored for five years following the date of the exit record or of the refusal of entry record, as applicable.
- 2 Each individual file together with the linked entry/exit record(s) or refusal of entry records shall be stored in the EES for five years and one day following the date of the last exit record if there is no entry record within five years from that last exit record or refusal of entry record.

3. If there is no exit record following the date of expiry of the [...] period of authorised stay, the data shall be stored for a period of five years following the last day of the authorised stay. The EES shall automatically inform the Member States three months in advance of the scheduled deletion of data on overstayers in order for them to adopt the appropriate measures that could lead to the detection of the overstayer and where possible and applicable contribute to the return of the overstayer.
4. By way of derogation of paragraph (1) [...] the entry/exit record(s) generated by third country nationals in their condition members of family [...] of a Union citizen to whom Directive 2004/38/EC applies or of a national of a third country enjoying the right of free movement under Union law and who do not hold a residence card referred to under Directive 2004/38/EC, shall be stored in the EES for a maximum of one year after the last exit record. If there is no exit record the data shall be stored for a period of five years from the last entry record.
5. Upon expiry of the retention period referred to in paragraphs 1 [...], 2 and 4 such data shall automatically be erased from the Central System.

### *Article 32*

#### *Amendment of data and advance data deletion*

1. The Member State responsible shall have the right to amend data which it has introduced into the EES, by correcting or deleting such data.
2. If the Member State responsible has evidence to suggest that data recorded in the EES are factually inaccurate or that data were processed in the EES in contravention of this Regulation, it shall check the data concerned and, if necessary, amend or erase them without delay from the EES and, where applicable, from the list of identified persons referred to in Article 11. This may also be done at the request of the person concerned in accordance with Article 46.



3. By way of derogation from paragraphs 1 and 2, if a Member State other than the Member State responsible has evidence to suggest that data recorded in the EES are factually inaccurate or that data were processed in the EES in contravention of this Regulation, it shall check the data concerned if it is possible to do this without consulting the Member State responsible and, if necessary, amend or erase them from the EES without delay and, where applicable, from the list of identified persons referred to in Article 11. Otherwise the Member State shall contact the authorities of the Member State responsible within a time limit of 14 days and the Member State responsible shall check the accuracy of the data and the lawfulness of its processing within a time limit of one month. This may also be done at the request of the person concerned in accordance with Article 46.
4. In the event that [...] a Member State [...] has evidence to suggest that visa-related data recorded in the EES are factually inaccurate or that such data were processed in the EES in contravention of this Regulation they shall first check the accuracy of these data against the VIS and if necessary shall amend them in the EES. Should the data recorded in the VIS be the same as in the EES, they shall inform the Member State responsible for entering those data in the VIS immediately through the infrastructure of the VIS in accordance with Article 24(2) of Regulation (EC) No 767/2008. The Member State responsible for entering the data in the VIS shall check the data concerned and if necessary correct or delete them immediately from the VIS and inform the Member State [...] concerned which shall, if necessary, amend or delete them from the EES without delay and, where applicable, from the list of identified overstayers referred to in Article 11.
5. The data of identified persons referred to in Article 11 shall be deleted without delay from the list referred to in that Article and shall be corrected in the EES where the third country national provides evidence, in accordance with the national law of the Member State responsible or of the Member State to which the request has been made, that he or she was forced to exceed the [...] duration of authorised stay due to unforeseeable and serious events, that he or she has acquired a legal right to short [...] stay or in case of errors. The third country national shall have access to an effective administrative and judicial remedy to ensure the data is amended.

6. Where a third country national has acquired the nationality of a Member State or has fallen under the scope of Article 2(3) before the expiry of the period referred to in Article 31, the individual file and the entry/exit records linked to it in accordance with Articles 14 and 15 and refusal of entry records in accordance with Article 16 shall be deleted without delay from the EES as well as, where applicable, from the list of identified persons referred to in Article 11:
- (a) by the Member State the nationality of which he or she has acquired, or
  - (b) the Member State that issued the residence permit or card or long stay visa.

Where a third country national has acquired the nationality of Andorra, Monaco, San Marino or where the third country national is in a possession of a passport issued by the Vatican City State he or she shall inform the competent authorities of the Member State he or she next enters of this change. That Member State shall delete their data without delay from the EES. The individual shall have access to an effective judicial remedy to ensure the data is deleted.

7. The Central System shall immediately inform all Member States of the erasure of data from the EES and where applicable from the list of identified persons referred to in Article 11.
8. In case another Member State than the Member State responsible has amended or erased data in accordance with this Regulation, this Member State shall be responsible for the amendments or erasure. The system will record all amendments and erasures applied.

## CHAPTER VI

### Development, Operation and Responsibilities

#### Article 33

##### *Adoption of implementing measures by the Commission prior to development*

The Commission shall adopt the following measures necessary for the development and technical implementation of the Central System, the National Uniform Interfaces, and the Communication Infrastructure, in particular measures for:

- (a) the specifications for the quality, resolution and use of fingerprints for biometric verification and identification in the EES;
- (b) the specifications for the quality, resolution and use of facial image for biometric verification and identification in the EES;
- (c) entering the data in accordance with Article 14, 15, 16, 17 and 18;
- (d) accessing the data in accordance with Articles 21 to 30;
- (e) amending, deleting and advance deleting of data in accordance with Article 32;
- (f) keeping and accessing the records in accordance with Article 41;
- (g) performance requirements, including minimal specifications for technical equipment and requirements on the biometric performance of the EES in particular in terms of the required False Positive Identification Rate, False Negative Identification Rate and Failure to Enrol Rate;
- (h) the specifications and conditions for the web-service referred to in Article 12;
- (i) [...]

- (j) the specifications and conditions for the provision of information in writing, and in another effective way [...] referred to in Article 44(3);
- (k) the establishment and the high level design of the interoperability referred to in Article 7;
- (l) for the specifications and conditions for the central repository referred in Article 57 (2);
- (m) adopt a decision on the date from which the EES is to start operations, after the conditions referred to in Article 60 are met;
- (n) the establishment of the list referred to in Article 11(2) and procedure for distribution of the list to Member States.

Those implementing acts shall be adopted as soon as possible in accordance with the examination procedure referred to in Article 61(2).

For the adoption of the measures set down for the establishment and the high level design of the interoperability specified in point (j), the Committee set up by Article 61 of this Regulation shall consult the VIS Committee set up by Article 49 of Regulation (EC) 767/2008.

#### *Article 34*

##### *Development and operational management*

1. eu-LISA shall be responsible for the development of the Central System, the National Uniform Interfaces, the Communication Infrastructure and the Secure Communication Channel between the EES Central System and the VIS Central System. It shall also be responsible for the development of the web service referred to in Article 12 in accordance with the specifications and conditions adopted in accordance with the examination procedure referred to in Article 61(2).

eu-LISA shall define the design of the physical architecture of the system including its Communication Infrastructure as well as the technical specifications and their evolution as regards the Central System, the Uniform Interfaces, the Secure Communication Channel between the EES Central System and the VIS Central System and the Communication Infrastructure, which shall be adopted by the Management Board, subject to a favourable opinion of the Commission. eu-LISA shall also implement any necessary adaptations to the VIS deriving from the establishment of interoperability with the EES as well as from the implementation of the amendments to Regulation (EC) No 767/2008 referred to in Article 55.

eu-LISA shall develop and implement the Central System, the National Uniform Interfaces, the Secure Communication Channel between the EES Central System and the VIS Central System, and the Communication Infrastructure as soon as possible after the entry into force of this Regulation and the adoption by the Commission of the measures provided for in Article 33.

The development shall consist of the elaboration and implementation of the technical specifications, testing and overall project coordination.

2. During the designing and development phase, a Programme Management Board composed of a maximum of 10 members shall be established. It shall be composed of [...] seven members appointed by eu-LISA's Management Board from among its members or their alternates, the Chair of the EES Advisory Group referred to in Article 62, a member representing eu-LISA appointed by its Executive Director and one member appointed by the Commission. The members appointed by eu-LISA's Management Board shall be elected only from those Member States which are fully bound under Union law by the legislative instruments governing the development, establishment operation and use of all the large-scale IT systems managed by eu-LISA and which will participate in the EES.

The Programme Management Board will meet regularly and at least three times per quarter [...]. It shall ensure the adequate management of the design and development phase of the EES and ensure the consistency between central and national EES projects. The Programme Management Board shall submit written reports every month to the Management Board on progress of the project. It shall have no decision-making power nor any mandate to represent the members of the Management Board.

The Management Board shall establish the rules of procedure of the Programme Management Board which shall include in particular rules on:

- (a) chairmanship;
- (b) meeting venues;
- (c) preparation of meetings;
- (d) admission of experts to the meetings;
- (e) communication plans ensuring full information to non-participating Members of the Management Board.

The chairmanship shall be held by [...] a Member State which [...] is fully bound under Union law by the legislative instruments governing the development, establishment operation and use of all the large-scale IT systems managed by eu-LISA [...].

All travel and subsistence expenses incurred by the members of the Programme Management Board shall be paid by the Agency and Article 10 of the eu-LISA Rules of Procedure shall apply mutatis mutandis. The Programme Management Board's secretariat shall be ensured by eu-LISA.

During the designing and development phase, the EES Advisory Group referred to in Article 62 shall be composed of the national EES project managers and chaired by eu-LISA. It shall meet [...] regularly and at least three times per quarter until the start of operations of the EES. It shall report after each meeting to the Programme Management Board. It shall provide the technical expertise to support the tasks of the Programme Management Board and shall follow-up on the state of preparation of the Member States.

3. eu-LISA shall be responsible for the operational management of the Central System, the Secure Communication Channel between the EES Central System and the VIS Central System and the National Uniform Interfaces. It shall ensure, in cooperation with the Member States, at all times the best available technology, subject to a cost-benefit analysis. eu-LISA shall also be responsible for the operational management of the Communication Infrastructure between the Central system and the National Uniform Interfaces and for the web-service referred to in Article 12.

Operational management of the EES shall consist of all the tasks necessary to keep the EES functioning 24 hours a day, 7 days a week in accordance with this Regulation, in particular the maintenance work and technical developments necessary to ensure that the system functions at a satisfactory level of operational quality, in particular as regards the response time for interrogation of the central database by border crossing points, in accordance with the technical specifications.

4. Without prejudice to Article 17 of the Staff Regulations of Officials of the European Union, eu-LISA shall apply appropriate rules of professional secrecy or other equivalent duties of confidentiality to its entire staff required to work with EES data. This obligation shall also apply after such staff leave office or employment or after the termination of their activities.

*Article 35*

*Responsibilities of Member States and Europol*

1. Each Member State shall be responsible for:
  - (a) the integration of the existing national [...] infrastructure necessary for border check and the connection to the National Uniform Interface;
  - (b) the organisation, management, operation and maintenance of its existing national [...] infrastructure necessary for border check and of its connection to the EES for the purpose of Article 5 excepted points (j), (k) and (l);
  - (c) the organisation of central access points and their connection to the National Uniform Interface for the purpose of law enforcement;
  - (d) the management and arrangements for access of duly authorised staff of the competent national authorities to the EES in accordance with this Regulation and to establish and regularly update a list of such staff and their profiles.
2. Each Member State shall designate a national authority, which shall provide the competent authorities referred to in Article 8 with access to the EES. Each Member State shall connect that national authority to the National Uniform Interface. Each Member State [...] shall connect their respective central access points referred to in Article 26 [...] to the National Uniform Interface.
3. Each Member State shall use automated procedures for processing the data.
4. Before being authorised to process data stored in the EES, the staff of the authorities having a right to access the EES shall be given appropriate training about data security and data protection rules in particular and on relevant fundamental rights.



5. Europol shall assume the responsibilities foreseen under paragraphs 3 and 4. It shall connect its central access point referred to in Article 27 to the EES and shall be responsible for that connection.

*Article 36*

*Responsibility for the use of data*

1. In relation to the processing of personal data in the EES, each Member State shall designate the authority which is to be considered as controller in accordance with Article 2(d) of Directive 95/46/EC and which shall have central responsibility for the processing of data by this Member State. Each Member State shall communicate the details of this authority to the Commission.

Each Member State shall ensure that the data recorded in the EES is processed lawfully, and in particular that only duly authorised staff have access to the data for the performance of their tasks. The Member State responsible shall ensure in particular that:

- (a) the data are collected lawfully and in full respect of the human dignity of the third country national;
  - (b) the data are registered lawfully into the EES;
  - (c) the data are accurate and up-to-date when they are transmitted to the EES.
2. eu-LISA shall ensure that the EES is operated in accordance with this Regulation and the implementing acts referred to in Article 33. In particular, eu-LISA shall:
- (a) take the necessary measures to ensure the security of the Central System and the Communication Infrastructure between the Central System and the National Uniform Interface, without prejudice to the responsibilities of each Member State;

- (b) ensure that only duly authorised staff has access to data processed in the EES.
3. eu-LISA shall inform the European Parliament, the Council and the Commission as well as the European Data Protection Supervisor of the measures it takes pursuant to paragraph 2 for the start of operations of the EES.

#### *Article 37*

##### *Keeping of data in national files National Entry Exit systems*

1. A Member State may keep the alphanumeric data which that Member State entered into the EES, in accordance with the purposes of the EES in its national files or national entry and exit system in full respect of Union Law.
2. The data shall not be kept in national files or national entry/exit systems longer than it is kept in the EES.
3. Any use of data which does not comply with paragraph 1 shall be considered a misuse under the national law of each Member State as well as Union law.
4. This Article shall not be construed as requiring any technical adaptation of the EES. Member States may keep data in accordance with this Article at their own cost, risk and with their own technical means.

#### *Article 38*

##### *Communication of data to third countries, international organisations and private parties*

1. Data stored in the EES shall not be transferred or made available to a third country, to an international organisation or any private party.

2. By way of derogation from paragraph 1, the data referred to in Article 14(1)(a), (b),(c) and (f) and Article 15(1)(a), (b), and (c) may be transferred or made available by border check authorities or immigration authorities to a third country or to an international organisation listed in the Annex I in individual cases, if necessary in order to prove the identity of third country nationals for the purpose of return, only where the following conditions are satisfied:
- (a) the Commission has adopted a decision on the adequate protection of personal data in that third country in accordance with Article 25(6) of Directive 95/46/EC, or a readmission agreement or any other type of similar arrangement is in force between [...] the European Union or a Member State and that third country, or Article 26(1)(d) of Directive 95/46/EC applies;
  - (b) the Member State shall inform the third country or international organisation of the obligation to use the data only for purposes for which they were provided; [...]
  - (c) the data are transferred or made available in accordance with the relevant provisions of Union law, in particular readmission agreements and transfer of personal data, and the national law of the Member State which transferred or made the data available, including the legal provisions relevant to data security and data protection;
  - (d) [...]
3. Transfers of personal data to third countries or international organisations pursuant to paragraph 2 shall not prejudice the rights of applicants for and beneficiaries of international protection, in particular as regards non-refoulement.
4. Personal data obtained from the Central System by a Member State or by Europol for law enforcement purposes shall not be transferred or made available to any third country, international organisation or private entity established in or outside the Union. The prohibition shall also apply if those data are further processed at national level or between Member States within the meaning of Article 2(b) of Framework Decision 2008/977/JHA.

4a. By way of derogation from paragraph 4, the data of third country nationals subject to a visa requirement to cross the external borders referred to in Article 14(1)(a), (b) and (c) 14 (2) (a) and (b), 14 (3) (a) and (b) and the data of third country nationals exempt from visa obligation referred to under Articles 15(1) (a) 14(2) (a) and (b), 14(3) (a) and (b) may be transferred or made available by the designated authority to a third country only if the following cumulative conditions are met:

(a) in an exceptional case of urgency, where there is an immediate and serious threat of a terrorist offence or other serious criminal offences as defined respectively under Article 3(1)(26) and (27) of this Regulation,

(b) the transfer is carried out in accordance with the applicable conditions set under Framework Decision 2008/977/JHA.

Where a transfer is based on this paragraph, such a transfer shall be documented and the documentation shall be made available to the supervisory authority on request, including the date and time of the transfer, information about the receiving competent authority, the justification for the transfer and the personal data transferred.

#### *Article 39*

##### *Data security*

1. The Member State responsible shall ensure the security of the data before and during the transmission to the National Uniform Interface. Each Member State shall ensure the security of the data it receives from the EES.
2. Each Member State shall, in relation to its national [...] infrastructure necessary for border check, adopt the necessary measures, including a security plan and a business continuity and disaster recovery plan, in order to:
  - (a) physically protect data, including by making contingency plans for the protection of critical infrastructure;

- (b) deny unauthorised persons access to national installations in which the Member State carries out operations in accordance with the purposes of the EES;
- (c) prevent the unauthorised reading, copying, modification or removal of data media;
- (d) prevent the unauthorised input of data and the unauthorised inspection, modification or deletion of stored personal data;
- (e) prevent the unauthorised processing of data in the EES and any unauthorised modification or deletion of data processed in the EES;
- (f) ensure that persons authorised to access the EES have access only to the data covered by their access authorisation, by means of individual user identities and confidential access modes only;
- (g) ensure that all authorities with a right of access to the EES create profiles describing the functions and responsibilities of persons who are authorised to enter, amend, delete, consult and search the data and make their profiles available to the [...] supervisory authorities referred to in Article 49 and to the national supervisory authorities referred to in Article 52(2) without delay at their request;
- (h) ensure that it is possible to verify and establish to which bodies personal data may be transmitted using data communication equipment;
- (i) ensure that it is possible to verify and establish what data has been processed in the EES, when, by whom and for what purpose;
- (j) prevent the unauthorised reading, copying, modification or deletion of personal data during the transmission of personal data to or from the EES or during the transport of data media, in particular by means of appropriate encryption techniques;
- (k) monitor the effectiveness of the security measures referred to in this paragraph and take the necessary organisational measures related to internal monitoring to ensure compliance with this Regulation.

3. As regards the operation of the EES, eu-LISA shall take the necessary measures in order to achieve the objectives set out in paragraph 2 including the adoption of a security plan and a business continuity and disaster recovery plan.

#### *Article 40*

##### *Liability*

1. Any person or Member State that has suffered damage as a result of an unlawful processing operation or any act incompatible with this Regulation shall be entitled to receive compensation from the Member State which is responsible for the damage suffered. That Member State shall be exempted from its liability, in whole or in part, if it proves that it is not responsible for the event which gave rise to the damage.
2. If any failure of a Member State to comply with its obligations under this Regulation causes damage to the EES, that Member State shall be held liable for such damage, unless and insofar as eu-LISA or another Member State participating in the EES failed to take reasonable measures to prevent the damage from occurring or to minimise its impact.
3. Claims for compensation against a Member State for the damage referred to in paragraphs 1 and 2 shall be governed by the provisions of national law of the defendant Member State.

#### *Article 41*

##### *Keeping of records by eu-LISA and Member States*

1. eu-LISA shall keep records of all data processing operations within the EES. Those records shall show the purpose of access referred to in Article 8, the date and time, the data transmitted as referred to in Article 14 to 17, the data used for interrogation as referred to in Articles 21 to 25 and the name of the authority entering or retrieving the data. [...]
2. For the consultations listed in Article 7, a record of each data processing operation carried out within the EES and the VIS shall be kept in accordance with this Article and Article 34 of Regulation (EC) 767/2008. eu-LISA shall ensure in particular that the relevant records of the concerned data processing operations are kept when the competent authorities launch a data processing operation directly from one system to the other.

2a. In addition to paragraphs 1 and 2, each Member State shall keep records of the staff duly authorised to enter or retrieve the data.

3. Such records may be used only for the data protection monitoring of the admissibility of data processing as well as to ensure data security. Those records shall be protected by appropriate measures against unauthorised access and deleted one year after the retention period referred to in Article 31 has expired, if they are not required for monitoring procedures which have already begun.

#### *Article 42*

##### *Self-monitoring*

Member States shall ensure that each authority entitled to access EES data takes the measures necessary to comply with this Regulation and cooperates, where necessary, with the supervisory authority and national supervisory authority.

Member States shall ensure that the technical performance of the border control infrastructure, availability, duration of the border control process and the data quality is closely monitored to ensure **that each Member State** meets the overall requirements for the proper functioning of the EES and an efficient border check process.

#### *Article 43*

##### *Penalties*

Member States shall take the necessary measures to ensure that any use of data entered in the EES in contravention of this Regulation is punishable by penalties [...] in accordance with national law, that are effective, proportionate and dissuasive.

## CHAPTER VII

### Rights and supervision on data protection

#### *Article 44*

##### *Right of information*

1. Without prejudice to the right of information in Article 10 of Directive 95/46/EC, third country nationals whose data are recorded in the EES shall be informed by the Member State responsible in writing or in another effective way of the following:
  - (a) an explanation using clear and plain language, of the fact that the EES may be accessed by the Member States and Europol for law enforcement purposes;
  - (b) the obligation on visa exempt third country nationals and on holders of a Facilitated Transit Document (FTD) issued in accordance with Regulation (EC) 693/2003 to have their fingerprints taken;
  - (c) the obligation on all third country nationals subject to registration in the EES to have their facial image recorded;
  - (d) that the collection of the data is mandatory for the examination of entry conditions;
  - (d1) an explanation that entry shall be refused if a third country national refuses to provide the requested biometric data for registration, [...] verification and/or identification in the EES;
  - (d2) the right to ask border check authorities during border checks at entry about the maximum remaining number of days of his/her authorised stay,



- (e) the right of access to data relating to them, the right to request that inaccurate data relating to them be corrected or that unlawfully processed data relating to them be deleted, including the right to receive information on the procedures for exercising those rights and contact details of the supervisory authorities, national supervisory authorities, or of the European Data Protection Supervisor if applicable, which shall hear claims concerning the protection of personal data.
2. The information provided in paragraph 1 of this Article shall be provided in writing, or in another effective way, at the time when the individual file of the person concerned is being created in accordance with Articles 14,15 or 16.
3. [...]The common information referred to in paragraph 1 of this Article shall be drawn up and set up by the Commission in accordance with the examination procedure referred to in Article 61(2) and [...] the content [...] shall be clear and [...] plain language and available in a linguistic version the person concerned understands or is reasonably supposed to understand.

The Commission shall provide the common information in a template. This template could in particular take the form of a poster. The template [...] shall be established in such a manner as to enable Member States to complete them with additional Member State specific information. That Member State specific information shall include at least the rights of the data subject, the possibility of assistance by the [...] supervisory authorities, as well as contact details of the office of the controller and supervisory authorities.

#### *Article 45*

##### *Information campaign*

The Commission shall, in cooperation with the supervisory authorities and national supervisory authorities and the European Data Protection Supervisor, accompany the start of the EES operation with an information campaign informing the public about the objectives, the data stored, the authorities having access and the rights of persons.

## Article 46

### *Right of access, correction and deletion*

1. [...] The requests of third country nationals related to the rights set out in Article 12 of Directive 95/46/EC may be addressed to the competent authority of any Member State.
2. If a request [...] is made to a Member State other than the Member State responsible, the authorities of the Member State to which the request has been made shall check the accuracy of the data and the lawfulness of the data processing in the EES within a time limit of one month if that check can be done without consulting the Member State responsible. Otherwise the Member State other than the Member State responsible shall contact the authorities of the Member State responsible within a time limit of 14 days and the Member State responsible shall check the accuracy of the data and the lawfulness of the data processing within a time limit of one month.
3. In the event that data recorded in the EES are factually inaccurate or have been recorded unlawfully, the Member State responsible or, where applicable, the Member State to which the request has been made shall correct or delete the data in accordance with Article 32. The Member State responsible or, where applicable, the Member State to which the request has been made shall confirm in writing to the person concerned without delay that it has taken action to correct or delete data relating to him.

In the event that visa-related data recorded in the EES are factually incorrect or have been recorded unlawfully, the Member State responsible or, where applicable, the Member state to which the request has been made shall first check the accuracy of these data against the VIS and if necessary will amend them in the EES. Should the data recorded in the VIS be the same as in the EES, the Member State responsible or, where applicable, the Member state to which the request has been made, shall contact the authorities of the Member State responsible for entering these data in the VIS within a time limit of 14 days. The Member State responsible for entering the data in the VIS shall check the accuracy of the visa related data and the lawfulness of its processing in the EES within a time limit of one month and inform the Member State concerned [...] which shall, if necessary, amend or erase them without delay from the EES and, where applicable, from the list of persons referred to in Article 11(2).

4. If [...] the Member State to which the request has been made does not agree that data recorded in the EES are factually inaccurate or have been recorded unlawfully, that Member State shall adopt an administrative decision explaining in writing to the person concerned without delay why it is not prepared to correct or delete data relating to him.
5. The Member State which has adopted the administrative decision pursuant to paragraph 4 [...] shall also provide the person concerned with information explaining the steps which he can take if he does not accept the explanation. [...] This shall include information on how to bring an action or a complaint before the competent authorities or courts of that Member State and any assistance, including from the supervisory authorities, that is available in accordance with the laws, regulations and procedures of that Member State.
6. Any request made pursuant to paragraphs 1 and 2 shall contain the necessary information to identify the person concerned [...]. That information shall be used exclusively to enable the exercise of the rights referred to in paragraphs 1 and 2 and shall be erased immediately afterwards.

7. Whenever a person requests data relating to him in accordance with paragraph 2, the competent authority shall keep a record in the form of a written document that such a request was made and how it was addressed and by which authority and shall make that document available to the [...] supervisory authorities without delay.

#### *Article 47*

##### *Cooperation to ensure the rights on data protection*

1. The competent authorities of the Member States shall cooperate actively to enforce the rights laid down in Article 46(3), (4) and (5).
2. In each Member State, the supervisory authority shall, upon request, assist and advise the person concerned in exercising his right to correct or delete data relating to him in accordance with Article 28(4) of Directive 95/46/EC.

In order to achieve those aims, the supervisory authority of the Member State responsible which transmitted the data and the supervisory authorities of the Member States to which the request has been made shall cooperate with each other.

#### *Article 48*

##### *Remedies*

1. In each Member State any person shall have the right to bring an action or a complaint before the competent authorities and/or courts of that Member State which refused the right of access to or the right of correction or deletion of data relating to him, provided for in Article 46 and 47(2).
2. The assistance of the supervisory authorities shall remain available throughout the proceedings.

## *Article 49*

### *Supervision by the [...] supervisory authority*

1. Each Member State shall ensure that the [...] supervisory authority or authorities designated pursuant to Article 28(1) of Directive 95/46/EC shall monitor the lawfulness of the processing of personal data referred to in Articles 13 to 19 by the Member State concerned, including their transmission to and from the EES.
2. The supervisory authority shall ensure that an audit of the data processing operations in the National System is carried out in accordance with relevant international auditing standards at least every four years from the start of operations of the EES.
3. Member States shall ensure that their supervisory authority has sufficient resources to fulfil the tasks entrusted to it under this Regulation.
4. [...]
5. Each Member State shall supply any information requested by the supervisory authorities and shall, in particular, provide them with information on the activities carried out in accordance with Articles 35, 36(1) and 39. Each Member State shall grant the supervisory authorities access to their records pursuant to Article [...] 41 and allow them access at all times to all their EES related premises.

## *Article 50*

### *Supervision by the European Data Protection Supervisor*

1. The European Data Protection Supervisor shall ensure that the personal data processing activities of eu-LISA concerning the EES are carried out in accordance with this Regulation.

2. The European Data Protection Supervisor shall ensure that an audit of the Agency's personal data processing activities is carried out in accordance with relevant international auditing standards at least every four years. A report of that audit shall be sent to the European Parliament, the Council, eu-LISA, the Commission, [...] the supervisory authorities and national supervisory authorities. eu-LISA shall be given an opportunity to make comments before the report is adopted.
3. eu-LISA shall supply information requested by the European Data Protection Supervisor, give him access to all documents and to its records referred to in Article 41 and allow him access to all its premises at any time.

#### *Article 51*

#### *Cooperation among [...] supervisory authorities, national supervisory authorities and the European Data Protection Supervisor*

1. The supervisory authorities, national supervisory authorities and the European Data Protection Supervisor shall actively cooperate within the framework of their responsibilities and shall ensure coordinated supervision of the EES and the National Systems.
2. They shall exchange relevant information, assist each other in carrying out audits and inspections, examine difficulties over the interpretation or application of this Regulation, assess problems in the exercise of independent supervision or the exercise of the rights of the data subject, draw up harmonised proposals for joint solutions to any problems and promote awareness of data protection rights, as necessary.
3. The supervisory authorities, national supervisory authorities and the European Data Protection Supervisor shall meet for that purpose at least twice a year. The costs of these meetings shall be borne by the European Data Protection Supervisor. Rules of procedure shall be adopted at the first meeting. Further working methods shall be developed jointly as necessary.

4. A joint report of activities shall be sent to the European Parliament, the Council, the Commission and eu-LISA every two years. That report shall include a chapter of each Member State prepared by the supervisory authority and national supervisory authority of that Member State.

*Article 52*

*Protection of personal data for law enforcement access*

1. Each Member State shall ensure that the provisions adopted under national law implementing Framework Decision 2008/977/JHA are also applicable to the access to EES by its national authorities in line with Article 1(2).
2. The monitoring of the lawfulness of the access to personal data by the Member States for the purposes listed in Article 1(2) of this Regulation, including their transmission to and from the EES, shall be carried out by the national supervisory authorities designated pursuant to Framework Decision 2008/977/JHA.
3. The processing of personal data by Europol shall be carried out in accordance with Decision 2009/371/JHA and shall be supervised by an independent external data protection supervisor. Articles 30, 31 and 32 of that Decision shall be applicable to the processing of personal data by Europol pursuant to this Regulation. The independent external data protection supervisor shall ensure that the rights of the third country national are not infringed.
4. Personal data accessed in the EES for the purposes laid down in Article 1(2) shall only be processed for the purposes of the prevention, detection or investigation of the specific case for which the data have been requested by a Member State or by Europol.

5. The Central System, the designated authorities, the central access points and Europol shall keep records of the searches for the purposes of enabling the national data protection authorities and the European Data Protection Supervisor to monitor the compliance of data processing with Union data protection rules. Other than for such purpose, personal data, as well as the records of the searches, shall be erased in all national and Europol files after a period of one month, unless those data and records are required for the purposes of the specific ongoing criminal investigation for which they were requested by a Member State or by Europol.

*Article 53*

*Logging and documentation*

1. Each Member State and Europol shall ensure that all data processing operations resulting from requests to access to EES data for the purposes laid down in Article 1(2) are logged or documented for the purposes of checking the admissibility of the request, monitoring the lawfulness of the data processing and data integrity and security, and self-monitoring.
2. The log or documentation shall show:
  - (a) the exact purpose of the request for access to EES data, including the terrorist offence or other serious criminal offence concerned and, for Europol, the exact purpose of the request for access;
  - (b) the reasonable grounds given for not making comparisons with other Member States under Decision 2008/615/JHA, in accordance with Article 29(2)(b) of this Regulation;
  - (c) the national file reference;
  - (d) the date and exact time of the request for access by the [...] Central Access Point to the Central System;



- (e) where applicable, the use of the urgent procedure referred to in Article 28(2) and the decision taken with regard to the ex-post verification;
  - (f) the data used for comparison;
  - (g) in accordance with national rules or with Decision 2009/371/JHA, the identifying mark of the official who carried out the search and of the official who ordered the search or supply.
3. Logs and documentation shall be used only for monitoring the lawfulness of data processing and for ensuring data integrity and security. Only logs containing non-personal data may be used for the monitoring and evaluation referred to in Article 64. The competent national supervisory authorities responsible for checking the admissibility of the request and monitoring the lawfulness of the data processing and data integrity and security shall have access to those logs at their request for the purpose of fulfilling their duties.

## CHAPTER VIII

### Amendments to other Union instruments

#### *Article 54*

##### *Amendment to the Convention implementing the Schengen Agreement*

In Article 20, of the Convention implementing the Schengen Agreement, paragraph 2 is replaced by the following:

2. Paragraph 1 shall not affect each Contracting Party's right to extend beyond 90 days in any 180-day period an alien's stay in its territory in exceptional circumstances or [...] **in accordance with a** bilateral agreement concluded before the entry into force of this Convention and notified to the Commission in accordance with the last subparagraph of this paragraph.

"The stay of an alien in the territory of a Contracting Party may only be extended upon request of the alien and lodged with the competent authorities of that Contracting Party upon entry or during the stay of the alien at the latest on the last working day of his/her 90-day stay in any 180-day period.

In case where the stay is extended, the competent authorities of that Contracting Party shall enter the data related to the extension in the latest relevant entry/exit record in accordance with Article 17 of the Regulation establishing the Entry/Exit system.

The alien shall **be authorised to stay only in the territory of that Contracting Party and** exit at the external borders of that Contracting party.

The competent authority that has extended the stay shall inform the alien concerned that the extension of stay is authorised only in the territory of that Contracting party and he/she shall exit at the external border of that Contracting party.

For the purposes of the application of this paragraph, the Contracting Parties shall notify to the Commission within three months after entry into force of this regulation the text of their relevant applicable bilateral agreements. If the Contracting party ceases to apply **any of those** bilateral agreements it shall notify to the Commission **thereof**. The Commission shall **publish** the information in the Official Journal of the European Union.

#### *Article 55*

#### *Amendments to Regulation (EC) 767/2008 concerning the Visa Information System*

Regulation (EU) No 767/2008 is amended as follows:

(0) In Article 10(1) the following indents **are** [...] added:

(dd) if applicable, the information indicating that the visa has been issued with limited territorial validity, on the basis of Article 25(1)(b) of the Regulation (EC) 810/2009.

**(l) if applicable, the status of the person indicating that the third country national is member of the family of a Union citizen to whom the Directive 2004/38/EC applies or of a third country national enjoying the right of free movement under Union law.**

(1) In Article 13 the following paragraph is added:

"3. Where a decision has been taken to annul or to revoke an issued visa, the visa authority which has taken the decision shall immediately retrieve and export automatically from the VIS into the Entry/Exit System (EES) the data listed under paragraph 1 of Article 17 of [Regulation N° XXX of the European Parliament and the Council establishing an Entry/Exit System (EES) to register entry and exit data of third country nationals crossing the external borders of the Member States of the European Union and determining the conditions for access to the EES for law enforcement purposes] \*."

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\* Regulation No XXX of the European Parliament and the Council establishing an Entry/Exit System (EES) to register entry and exit data of third country nationals crossing the external borders of the Member States of the European Union and determining the conditions for access to the EES for law enforcement purposes (OJ ...) [full title + OJ reference]

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(2) In Article 14 the following paragraph is added:

"3. The visa authority which has taken a decision to extend the period of validity and/or the duration of stay of an issued visa shall immediately retrieve and export from the VIS into the EES the data listed under paragraph 1 of Article 17 of [Regulation establishing an Entry/Exit System (EES)]."

(3) Article 15 is amended as follows:

(a) points (b) and (c) of paragraph 2 are replaced by the following:

"(b) surname (family name), first name(s) (given names); date of birth, nationality; sex;

(c) type and number of the travel document; three letter code of the issuing country of the travel document, and the date of expiry of the validity of the travel document;"

(b) the following paragraphs are added:

"4. For the purposes of carrying out the consultation of the EES for examining and deciding on visa applications in accordance with Article 22 of [Regulation establishing an Entry/Exit System (EES)], the competent visa authority shall be given access to search the EES directly from the VIS with one or several of the data referred to in that Article.

5. In circumstances where the search with the data referred to in paragraph 2 indicates that data on the third country national are not recorded in the VIS or where there are doubts as to the identity of the third country national, the competent visa authority shall have access to data for identification in accordance with Article 20."

(4) In Chapter III a new Article 17a is added:

*"Article 17a*

*Interoperability with the EES*

1. From the start of operations of the EES referred to in Article 60(1) of [Regulation establishing an Entry/Exit System (EES)], interoperability between the EES and the VIS is established to ensure more efficiency and rapidity of border checks. To this effect eu-LISA shall establish a Secure Communication Channel between the EES Central System and the VIS Central System to enable interoperability between the EES and the VIS. Direct consultation between the systems shall only be possible if both this Regulation and [Regulation establishing an Entry/Exit System (EES)] [...] provide for it.

2. The interoperability requirement shall enable the visa authorities using the VIS to consult the EES from the VIS in order to:

(a) consult the EES when examining and deciding on visa applications as referred to in Article 22 of [Regulation establishing an Entry/Exit System (EES)] and Article 15(4) of this Regulation;

- (b) to retrieve and export automatically the visa related data directly from the VIS into the EES in case a visa is annulled, revoked or extended in accordance with Article 17 of [Regulation establishing an Entry/Exit System (EES)] and Articles 13 and 14 of this Regulation;
3. The interoperability requirement shall enable the competent [...] authorities for carrying out checks at border crossing points at external borders in accordance with Regulation (EU) 2016/399 using the EES to consult the VIS from the EES in order to:
- (a) retrieve and import automatically the visa related data directly from the VIS to the EES in order to create or update the entry/exit record or refusal of entry record [...] of a visa holder in the EES in accordance with Articles 13, 14 and 16 [Regulation establishing an Entry/Exit System (EES)] and Article 18a of this Regulation;
- (b) retrieve and import automatically the visa related data directly from the VIS in case a visa is annulled, revoked or extended in accordance with Article 17 of [Regulation establishing an Entry/Exit System (EES)] and Articles 13 and 14 of this Regulation;
- (c) verify at the external borders the authenticity and validity of the visa and/or whether the conditions for entry to the territory of the Member States in accordance with Article 6 of Regulation (EU) 2016/399 are fulfilled as referred to in Article 18(2) of this Regulation;
- (d) check at the external borders whether third country nationals exempt from the visa obligation who do not have an individual file recorded in the EES were previously registered in the VIS in accordance with Article 21 of [Regulation establishing an Entry/Exit System (EES)] and Article 19a of this Regulation;
- (e) where the identity of a visa holder cannot be verified against the EES, verify at the external borders the identity of a visa holder with fingerprints against the VIS in accordance with Articles 21(2) and 21(4) of [Regulation establishing an Entry/Exit System (EES)] and 18(6) of this Regulation.

4. In accordance with Article 33 of the [Regulation establishing an Entry/Exit System (EES)], the Commission shall adopt the measures necessary for the establishment and the high level design of the interoperability in accordance with Article 34 of the [Regulation establishing an Entry/Exit System (EES)]. In order to establish the interoperability with the EES, the Management Authority shall develop the required evolutions and/or adaptations of the Central Visa Information System, the National Interface in each Member State, and the communication infrastructure between the Central Visa Information System and the National Interfaces. The national infrastructures shall be adapted and/or developed by the Member States.

(5) Article 18 is replaced by the following:

*"Article 18 Access to data for verification at [...] border crossing points at external borders*

1. For the sole purpose of verifying the identity of the visa holders, the authenticity, temporal and territorial validity and status of the visa and/or whether the conditions for entry to the territory of the Member States in accordance with Article 6 of Regulation (EU) 2016/399 are fulfilled, the competent authorities for carrying out checks at [...] border crossing points at external borders in accordance with Regulation (EU) 2016/399 shall have access to search using the following data:

- (a) surname (family name), first name(s) (given names); date of birth, nationality; sex; type and number of the travel document; three letter code of the issuing country of the travel document, and the date of expiry of the validity of the travel document;
- (b) or the number of the visa sticker.

2. Solely for the purposes referred to in paragraph 1, where a search is launched in the EES pursuant to Article 21(2) or Article 21(4) of [Regulation establishing an Entry/Exit System (EES)], the competent [...] authority for carrying out checks at border crossing points at external borders in accordance with Regulation (EU) 2016/399 may launch a search in the VIS directly from the EES using the data referred to in point (a) of paragraph 1.

3. If the search with the data listed in paragraph 1 indicates that the VIS stores data on one or more issued or extended visa(s)), which are under their validity period and are under their territorial [...] validity for the border crossing, the competent [...] authority for carrying out checks at border crossing points at external borders in accordance with Regulation (EU) 2016/399 shall be given access to consult the following data of the concerned application file as well as of linked application file(s) pursuant to Article 8(4), solely for the purposes referred to in paragraph 1:
- (a) the status information and the data taken from the application form, referred to in Article 9(2) and (4);
  - (b) photographs;
  - (c) the data entered in respect of the visa(s) issued, annulled, revoked or whose validity is extended referred to in Articles 10, 13 and 14.

In addition, for those visa holders for whom certain data are not required to be provided for legal reasons or factually cannot be provided, the competent [...] authority for carrying out checks at border crossing points at external borders in accordance with Regulation (EU) 2016/399 shall receive a notification related to the specific data field(s) concerned which shall be marked as ‘not applicable’.

4. If the search with the data listed in paragraph 1 indicates that data on the person are recorded in the VIS but that the visa(s) recorded are not valid, the competent [...] authority for carrying out checks at border crossing points at external borders in accordance with Regulation (EU) 2016/399 shall be given access to consult the following data of the application file(s) as well as of the linked application file(s) pursuant to Article 8(4), solely for the purposes referred to in paragraph 1:
- (a) the status information and the data taken from the application form, referred to in Article 9(2) and (4);

- (b) photographs;
- (c) the data entered in respect of the visa(s) issued, annulled, revoked or whose validity is extended, referred to in Articles 10, 13 and 14.

5. In addition to the consultation carried out under paragraph 1, and prior to consulting the data in accordance with paragraphs 3 or 4, the competent [...] authority for carrying out checks at border crossing points at external borders in accordance with Regulation (EU) 2016/399 shall verify the identity of a person against the VIS if the search with the data listed in paragraph 1 indicates that data on the person are recorded in the VIS and one of the following conditions is met:

- (a) the identity of the person cannot be verified against the EES in accordance with Article 21(2) of [Regulation establishing an Entry/Exit System (EES)], when:
  - (i) the visa holder is not yet registered into the EES;
  - (ii) the technology is not available at the border crossing point for the use of live facial image and therefore the identity of the visa holder cannot be verified against the EES;
  - (iii) there are doubts as to the identity of the visa holder;
  - (iv) for any other reason, the identity of the visa holder cannot be verified against the EES;
- (b) the identity of the person can be verified against the EES but, for the first time after the creation of the individual file, that person intends to cross the external borders of a Member State in which this Regulation is applicable.

The competent [...] authorities for carrying out checks at border crossing points at external borders shall verify the fingerprints of the visa holder against the fingerprints recorded in the VIS. For visa holders whose fingerprints cannot be used, the search mentioned under paragraph 1 shall be carried out only with the alphanumeric data foreseen under paragraph 1 of this Article.



6. For the purpose of a verifying the fingerprints against the VIS as laid down under paragraph 5, the competent authority may launch a search from the EES to the VIS.
  7. In circumstances where verification of the visa holder or of the visa fails or where there are doubts as to the identity of the visa holder, the authenticity of the visa and/or the travel document, the duly authorised staff of those competent authorities shall have access to data in accordance with Article 20(1) and (2)."
- (6) The following Article 18a is inserted:

*"Article 18a*

*Retrieval of VIS data for creating or updating [...] entry/exit record or refusal of entry record of a visa holder into the EES*

1. [...] When creating or updating the [...] entry/exit record or refusal of entry record of a visa holder in the EES in accordance with Article 13(2) and Article 14 and 16 of [Regulation establishing an Entry/Exit System (EES)], the competent [...] authority for carrying out checks at border crossing points at external borders in accordance with Regulation (EU) 2016/399 shall be given access to retrieve in the VIS and import automatically to the EES, the data stored in the VIS and listed in Article 14([...]2) (c), (d), (e), (f) and (g) of [Regulation establishing an Entry/Exit System (EES)].
- (7) The following Article 19a is inserted:

*"Article 19a*

*Use of the VIS before creating in the EES the individual files of third country nationals exempt from the visa obligation as laid down in Article [...] 21 of [Regulation establishing an Entry/Exit System (EES)]*

1. For the purpose of checking whether a person has been previously registered in the VIS, the competent authorities for carrying out checks at external border crossing points in accordance with Regulation (EU) 2016/399 shall consult the VIS:

- (a) before creating in the EES the individual file of third country nationals exempt from the visa obligation as laid down in Article 15 of [Regulation establishing an Entry/Exit System (EES)];
- (b) for third country nationals exempt from the visa obligation who had their individual file created in the EES by a Member State in which this Regulation is not applicable, when, for the first time after the creation of the individual file, the person intends to cross the external borders of a Member State in which this Regulation is applicable.
2. For the purpose of paragraph 1, where Article 21(4) of [Regulation establishing an Entry/Exit System (EES)] applies and the search referred to in Article 25 of that Regulation indicates that data on a person are not recorded in the EES or where Article 21(5) of [Regulation establishing an Entry/Exit System (EES)] applies, the competent [...] authority for carrying out checks at border crossing points at external borders in accordance with Regulation (EU) 2016/399 shall have access to search using the following data: surname (family name), first name(s) (given names); date of birth, nationality; sex; type and number of the travel document; three letter code of the issuing country of the travel document, and the date of expiry of the validity of the travel document.
3. Solely for the purposes referred to in paragraph 1, further to a search launched in the EES pursuant to Article 21(4) of [Regulation establishing an Entry/Exit System (EES)] or where Article 21(5) of [Regulation establishing an Entry/Exit System (EES)] applies, the competent [...] authority for carrying out checks at border crossing points at external borders in accordance with Regulation (EU) 2016/399 may launch a search in the VIS directly from the EES using the alphanumeric data foreseen under paragraph 2.

4. In addition, if the search with the data listed in paragraph 2 indicates that data on the person are recorded on the VIS, the competent authority for carrying out checks at border crossing points at external borders in accordance with Regulation (EU) 2016/399 shall verify the fingerprints of the person against the fingerprints recorded in the VIS. The competent authority for carrying out checks at border crossing points at external borders in accordance with Regulation (EU) 2016/399 may launch such verification from the EES. For persons whose fingerprints cannot be used, the search shall be carried out only with the alphanumeric data foreseen under paragraph 2 of this Article.
5. If the search with the data listed in paragraph 2 and the verification of paragraph 4 indicates that data on the person are recorded on the VIS, the competent [...] authority for carrying out checks at border crossing points at external borders in accordance with Regulation (EU) 2016/399 shall be given access to consult the following data of the concerned application file(s) as well as of linked application file(s) pursuant to Article 8(4), solely for the purposes referred to in paragraph 1:
- (a) the status information and the data taken from the application form, referred to in Article 9(2) and (4);
  - (b) photographs;
  - (c) the data entered in respect of the visa(s) issued, annulled, revoked or whose validity is extended referred to in Articles 10, 13 and 14.
5. [...]
6. In circumstances where the verification provided under paragraphs 2 and/or 5 fails or where there are doubts as to the identity of the person or the authenticity of the travel document, the duly authorised staff of those competent authorities shall have access to data in accordance with Article 20(1) and (2). The competent [...] authority for carrying out checks at border crossing points at external borders in accordance with Regulation (EU) 2016/399 may launch from the EES the identification referred to in Article 20 of this Regulation."

(8) In Article 20, paragraph 1 is replaced by the following:

"1. The authorities competent for carrying out checks at border crossing points at external borders in accordance with Regulation (EU) 2016/399 or within the territory of the Member States as to whether the conditions for entry to, stay or residence on the territory of the Member States are fulfilled, shall have access to search with the fingerprints of that person [...] for the sole purposes of the identification of any person who may have been registered previously in the VIS or who may not, or may no longer, fulfil the conditions for the entry to, stay or residence on the territory of the Member States [...]."

(9) In Article 26 the following paragraph is inserted:

"3a. [*Six months after the entry into force of Regulation establishing an Entry/Exit System (EES)*], the Management Authority shall be responsible for the tasks referred to in paragraph 3 of this Article."

(10) In Article 34, paragraph 1 is replaced by the following:

"1. Each Member State and the Management Authority shall keep records of all data processing operations within the VIS. These records shall show the purpose of access referred to in Article 6(1) and in Articles 15 to 22, the date and time, the type of data transmitted as referred to in Articles 9 to 14, the type of data used for interrogation as referred to in Articles 15(2), 17, 18(1), 18 (5), 19(1), 19a(2), 19a(5), 20(1), 21(1) and 22(1) and the name of the authority entering or retrieving the data. In addition, each Member State shall keep records of the staff duly authorised to enter or retrieve the data.

1a. For the operations listed in Article 17a a record of each data processing operation carried out within the VIS and the EES shall be kept in accordance with this Article and Article 41 of the [Regulation establishing an Entry/Exit System (EES)]."

*Article 56*

*Amendments to Regulation (EU) No 1077/2011*

Regulation (EU) No 1077/2011 is amended as follows:

- (1) In Article 1, paragraph 2 is replaced by the following:
- “2. The Agency shall be responsible for the operational management of the second generation Schengen Information System (SIS II), the Visa Information System, Eurodac and the Entry/Exit System (EES).

- (2) A new Article 5a is added after Article 5:

"Article 5a

Tasks relating to the EES

In relation to the EES, the Agency shall perform:

- (a) the tasks conferred on it by Regulation (EU) No XXX/20XX of the European Parliament and of the Council of X.X.X establishing an Entry/Exit System to register entry and exit data and refusal of entry data of third country nationals crossing the external borders of the Member States of the European Union and determining the conditions for access to the EES for law enforcement purposes;
- (b) tasks relating to training on the technical use of the EES.”
- (3) Article 7 is amended as follows:
- (a) paragraphs 5 and 6 are replaced by the following:
- “5. Tasks related to the operational management of the communication infrastructure may be entrusted to external private-sector entities or bodies in accordance with Regulation (EC, Euratom)1605/2002. In such a case, the network provider shall be bound by the security measures referred to in paragraph 4 and shall have no access to SIS II, VIS, Eurodac or EES operational data, or to the SIS II-related SIRENE exchange, by any means.

6. Without prejudice to the existing contracts on the network of SIS II, VIS, Eurodac and EES, the management of encryption keys shall remain within the competence of the Agency and shall not be outsourced to any external private-sector entity."

(4) In Article 8, paragraph 1 is replaced by the following:

"1. The Agency shall monitor the developments in research relevant for the operational management of SIS II, VIS, Eurodac, EES and other large-scale information systems".

(5) In Article 12, paragraph 1 is amended as follows:

(a) a new point (sa) is added after point (s):

"(sa) adopt the reports on the development of the EES pursuant to Article 64(2) of Regulation (EU) XX/XX of XXX".

(a) point (t) is replaced by the following:

"(t) adopt the reports on the technical functioning of SIS II pursuant to Article 50(4) of Regulation (EC) No 1987/2006 and Article 66(4) of Decision 2007/533/JHA respectively, of VIS pursuant to Article 50(3) of Regulation (EC) No 767/2008 and Article 17(3) of Decision 2008/633/JHA and of EES pursuant to Article 64(4) of Regulation (EU) XX/XX of XXX."

(b) point (v) is replaced by the following:

"(v) make comments on the European Data Protection Supervisor's reports on the audits pursuant to Article 45(2) of Regulation (EC) No 1987/2006, Article 42(2) of Regulation (EC) No 767/2008, Article 31(2) of Regulation (EU) No 603/2013 and Article 50(2) of Regulation (EU) XX/XX of XXX and ensure appropriate follow-up of those audits".

(b) a new point (xa) is inserted after point x:

"(xa) publish statistics related to EES pursuant to Article 57 of Regulation (EU) No XXXX/XX.

(c) a new point (za) is added to point z:

“(za) ensure annual publication of the list of competent authorities pursuant to Article 8(2) of Regulation (EU) No XXXX/XX.

(6) In Article 15, paragraph 4 is replaced by the following:

“4. Europol and Eurojust may attend the meetings of the Management Board as observers when a question concerning SIS II, in relation to the application of Decision 2007/533/JHA, is on the agenda. Europol may also attend the meetings of the Management Board as observer when a question concerning VIS, in relation to the application of Decision 2008/633/JHA, or a question concerning Eurodac, in relation to the application of Regulation (EU) No 603/2013, or a question concerning EES in relation to the application of Regulation (EU) XX/XX of XXX is on the agenda”.

(7) In Article 17 paragraph 5

,point (g) is replaced by the following:

“(g) without prejudice to Article 17 of the Staff Regulations, establish confidentiality requirements in order to comply with Article 17 of Regulation (EC) No 1987/2006, Article 17 of Decision 2007/533/JHA, Article 26(9) of Regulation (EC) No 767/2008, Article 4(4) of Regulation (EU) No 603/2013 and Article 34(4) of [Regulation (EU) XX/XX of XXX.]”

(8) Article 19 is amended as follows:

(a) paragraph 1 is replaced by the following:

“1. The following Advisory Groups shall provide the Management Board with expertise relating to large-scale IT systems and, in particular, in the context of the preparation of the annual work programme and the annual activity report:

(a) SIS II Advisory Group;

(b) VIS Advisory Group;

- (c) Eurodac Advisory Group;
- (d) EES Advisory Group."
- (e) paragraph (3) is replaced by the following:

“Europol and Eurojust may each appoint a representative to the SIS II Advisory Group. Europol may also appoint a representative to the VIS, Eurodac and EES Advisory Groups”.

## CHAPTER IX

### Final provisions

#### *Article 57*

##### *Use of data for reporting and statistics*

1. The duly authorised staff of the competent authorities of Member States, the Commission, eu-LISA and the European Border and Coast Guard Agency established by Regulation (EU) 2016/1624 [...] shall have access to consult the following data, solely for the purposes of reporting and statistics without allowing for individual identification:
  - (a) status information;
  - (b) nationality, gender and date of birth of the third country national;
  - (c) date and border crossing point of the entry to a Member State and date and border crossing point of the exit from a Member State;
  - (d) the type of the travel document and three letter code of the issuing country;
  - (e) number of overstayers referred to in Article 11, nationalities and border crossing point of entry;
  - (f) the data entered in respect of any stay revoked or whose validity is extended;



- (g) the three letter code of the Member State that issued the [...] visa, [...] if applicable;
- (h) the number of persons exempt from the requirement to give fingerprints pursuant to Article 15(2) and (3);
- (i) the number of third country nationals refused entry, the nationalities of third country nationals refused entry and the type of border (land, air or sea) [...] the border crossing point at which entry was refused and the grounds on which entry has been refused.

2. For the purpose of paragraph 1, eu-LISA shall establish, implement and host a central repository in its technical sites containing the data referred to in paragraph 1 which would not allow for the identification of individuals and would allow the authorities listed in paragraph 1 to obtain customisable reports and statistics on the entries and exits, refusals of entry and overstay of third country nationals to improve the assessment of the risk of overstay, to enhance the efficiency of border checks, to help consulates processing the visa applications and to support evidence-based Union migration policymaking. The repository shall also contain daily statistics on the data referred to in paragraph 4. Access to the central repository shall be granted by means of secured access through S-TESTA with control of access and specific user profiles solely for the purpose of reporting and statistics.

Detailed rules on the operation of the central repository and the data protection and security rules applicable to the repository shall be adopted in accordance with the examination procedure referred to in Article 61(2).

3. The procedures put in place by eu-LISA to monitor the development and the functioning of the EES referred to in Article 64(1) shall include the possibility to produce regular statistics for ensuring that monitoring.

4. Every quarter, eu-LISA shall publish statistics on the EES showing in particular the number, nationality and border crossing point of entry of overstayers, of third country nationals who were refused entry, including the grounds for refusal, and of third country nationals whose stays were revoked or extended as well as the number of third country nationals exempt from the requirement to give fingerprints.
5. At the end of each year, statistical data shall be compiled in the form of quarterly statistics for that year. The statistics shall contain a breakdown of data for each Member State.
6. At the request of the Commission, eu-LISA shall provide it with statistics on specific aspects related to the implementation of this Regulation as well as the statistics pursuant to paragraph 3.

#### *Article 58*

##### *Costs*

1. The costs incurred in connection with the establishment and operation of the Central System, the Communication Infrastructure and the National Uniform Interface shall be borne by the general budget of the Union.
2. Costs incurred by the integration of the existing national [...] infrastructure necessary for border check and the connection to the National Uniform Interface as well as by hosting the National Uniform Interface shall be borne by the general budget of the Union.

The following costs shall be excluded:

- (a) Member States' project management office (meetings, missions, offices);
- (b) hosting of national systems (space, implementation, electricity, cooling);
- (c) operation of national systems (operators and support contracts);
- (d) customisation of existing border check [...] and policing systems for national entry-exit systems;

- (e) project management of national entry-exit systems;
  - (f) design, development, implementation, operation and maintenance of national communication networks;
  - (g) Automatic Border Control systems, self-service systems and e-gates.
3. The costs incurred by the central access points as referred to in article 26 and 27 shall be borne by each Member State and Europol, respectively. [...] The costs for the[...] connection of these central access points to the National Uniform Interface and to the EES shall be borne by each Member State and Europol, respectively.
4. Each Member State and Europol shall set up and maintain at their expense the technical infrastructure necessary to implement Article [...]1(2) and shall be responsible for bearing the costs resulting from access to the EES for that purpose.

#### *Article 59*

#### *Notifications*

1. Member States shall notify the Commission of the authority which is to be considered as controller referred to in Article 49.
2. Member States shall notify eu-LISA of the competent authorities referred to in Article 8 which have access to enter, amend, delete, consult or search data.
3. Member States shall notify the Commission and eu-LISA of their designated authorities and of their central access points referred to in Article 26 and shall notify without delay any amendments thereto.
4. Europol shall notify the Commission and eu-LISA of its designated authority and its central access point referred to in Article 27 and shall notify without delay any amendments thereto.

5. eu-LISA shall notify the Commission of the successful completion of the test referred to in Article 60(1)(b).
6. Commission shall make the information notified pursuant to paragraph 1 available to the Member States and the public by a constantly updated public website.
- 6a. The Commission shall publish the information referred to in paragraphs 3 and 4 in the Official Journal of the European Union on an annual basis and via an electronic publication that shall be available online and updated without delay.

*Article 60*

*Start of operations*

1. The Commission shall determine the date from which the EES is to start operations, after the following conditions are met:
  - (a) the measures referred to in Article 33 have been adopted;
  - (b) eu-LISA has declared the successful completion of a comprehensive test of the EES, which shall be conducted by eu-LISA in cooperation with the Member States;
  - (c) the Member States have validated the technical and legal arrangements to collect and transmit the data referred to in Articles 14 to 18 to the EES and have notified them to the Commission;
  - (d) the Member States have completed the notifications to the Commission referred to in Article 59 (1) and (3).
- 1a. The start operations of the EES according to paragraph 1 shall be limited to:
  - a) the Member States which apply Schengen acquis in full, and

- b) the Member States which do not yet apply Schengen acquis in full, but **for which**
- (i) the verification in accordance with applicable Schengen evaluation procedures has already been successfully completed,
  - (ii) the provisions of the Schengen acquis relating the Schengen Information System have been put into effect in accordance with the relevant Accession Treaty, and
  - (iii) the relevant provisions of the Schengen acquis relating the Visa information system have been put into effect in accordance with the relevant Accession Treaty.
- 1b. Member State which is not covered by paragraph 1a, shall be connected to the EES as soon as the conditions referred to in paragraph 1(b), (c), (d) and paragraph 1a(b) are met. The Commission shall determine the date from which the EES is to start the operations in that Member State.
2. The Commission shall inform the European Parliament and the Council of the results of the test carried out pursuant to point (b) of paragraph 1.
3. The Commission decision referred to in paragraph 1 and 1b shall be published in the *Official Journal*.
4. The Member States and Europol shall start using the EES from the date determined by the Commission in accordance with paragraph 1 or where applicable with paragraph 1b.

**Article 60a**

**By derogation to Articles 6(1) SBC and [6(1)] of Annex IX to of Regulation 2016/399, for the purpose of determination of duration of the authorised stay, the stays in the territory of the Member States not operating the EES should be taken into consideration separately from the stays in the territory of the Member States operating the EES.**

*Article 61*  
*Committee procedure*

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

*Article 62*

*Advisory group*

An Advisory Group shall be established by eu-LISA and provide it with the expertise related to the EES in particular in the context of the preparation of its annual work programme and its annual activity report. During the design and development phase, article 34(2) applies.

*Article 63*

*Training*

eu-LISA shall perform tasks related to providing training on the technical use of the EES in accordance with the relevant provisions in Regulation 1077/2011.

*Article 63a*

*Practical Handbook*

The Commission shall, in close cooperation with the Member States, eu-LISA and other relevant agencies, make available a practical handbook for the implementation and management of the EES. The Handbook shall provide technical and operational guidelines, recommendations and best practices. The Commission shall adopt the Handbook in the form of a recommendation.

## Article 64

### *Monitoring and evaluation*

1. eu-LISA shall ensure that procedures are in place to monitor the development of the EES in light of objectives relating to planning and costs and to monitor the functioning of the EES in light of objectives relating to the technical output, cost-effectiveness, security and quality of service.
2. By [*Six months after the entry into force of this Regulation* – OPOCE, please replace with the actual date] and every six months thereafter during the development phase of the EES, eu-LISA shall submit a report to the European Parliament and the Council on the state of play of the development of the Central System, the Uniform Interfaces and the Communication Infrastructure between the Central System and the Uniform Interfaces. Once the development is finalised, a report shall be submitted to the European Parliament and the Council explaining in detail how the objectives, in particular relating to planning and costs, were achieved as well as justifying any divergences.
3. For the purposes of technical maintenance, eu-LISA shall have access to the necessary information relating to the data processing operations performed in the EES.
4. Two years after the start of operations of the EES and every two years thereafter, eu-LISA shall submit to the European Parliament, the Council and the Commission a report on the technical functioning of EES, including the security thereof.
5. Three years after the start of operations of the EES and every four years thereafter, the Commission shall produce an overall evaluation of the EES. This overall evaluation shall include an examination of results achieved against objectives and the impact on fundamental rights, and assessing the continuing validity of the underlying rationale, the continuing validity of the **biometric** data required for the proper functioning of the ESS, the application of the Regulation, the security of the EES and any implications on future operations, and shall make any necessary recommendations. The Commission shall transmit the evaluation report to the European Parliament and the Council.

6. The Member States and Europol shall provide eu-LISA and the Commission with the information necessary to draft the reports referred to in paragraphs 4 and 5 according to the quantitative indicators and a template in electronic format predefined by the Commission and/or eu-LISA. This information shall not jeopardise working methods or include information that reveals sources, staff members or investigations of the designated authorities.
7. eu-LISA shall provide the Commission with the information necessary to produce the overall evaluations referred to in paragraph 5.
8. While respecting the provisions of national law on the publication of sensitive information, each Member State and Europol shall prepare annual reports on the effectiveness of access to EES data for law enforcement purposes containing [...] statistics on:
  - (a) the exact purpose of the consultation (whether for identification or for entry/exit records) including the type of terrorist or serious criminal offence;
  - (b) reasonable grounds given for the substantiated suspicion that the suspect, perpetrator or victim of a terrorist offence or other serious criminal offence is covered by this Regulation;
  - (c) the reasonable grounds given not to conduct consultation of other Member States' automated fingerprint identification systems under Decision 2008/615/JHA in accordance with Article 29(2)(b);
  - (d) the number of requests for access to the EES for law enforcement purposes;
  - (e) the number and type of cases which have ended in successful identifications;
  - (f) the need and use made of the exceptional case of urgency including those cases where that urgency was not accepted by the ex post verification carried out by the central access point.



eu-LISA shall create templates to ensure collection of all information in this paragraph.  
This template shall be available to the Member States.

Member States' and Europol's annual reports shall be transmitted to the Commission by 30 June of the subsequent year.

*Article 65*  
*Entry into force and applicability*

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*. This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at Brussels,

*For the European Parliament*  
The President

*For the Council*  
The President

## Annex I

### *International organisations authorised to request data under Article 38(2)*

1. UN organisations (such as UNHCR);
2. International Organization for Migration (IOM);
3. The International Committee of the Red Cross.

## Annex II

### The specific provisions for third country nationals who perform their border crossing on the basis of a valid Facilitated Transit Document

- (1) By way of derogation from Article 14(1) to (3) of this Regulation, for third country nationals who perform their border crossing on the basis of a valid Facilitated Transit Document (FTD) issued in accordance with Regulation (EC) 693/2003, the border check authorities shall:
- a) create/update their individual file which shall contain the data foreseen under Article 15(1) (a), (b) and (c) of this Regulation. In addition, their individual file shall indicate that the person holds a Facilitated Transit Document (FTD),
  - b) for each of their entries performed on the basis of a valid Facilitated Transit Document (FTD), the data listed under Articles 14(2)(a) to (c) of this Regulation as well as the following data shall be entered in an entry/exit record:
    - i) the indication that the entry was performed on the basis of an FTD,
    - ii) the date **and time** of end of the maximum duration of the transit as **it results from Article 3(2) of Regulation (EC) 693/2003** [...].
- (2) In addition, at the first entry on the basis of an FTD, the number of authorised entries and the date of expiry of the validity of the FTD shall be entered into the entry/exit record.
- (3) Article 14(3) and (4) of this Regulation shall be applicable *mutatis mutandis* to third country nationals holding a Facilitated Transit Document (FTD) issued in accordance with Regulation (EC) 693/2003.

- (4) For verification at the external borders and within the territories of the Member States, third country nationals who perform their border crossing on the basis of a valid Facilitated Transit Document (FTD) shall be subject mutatis mutandis to the verifications and identifications provided under Articles 21 and 24 of this Regulation and Articles 18 and 19a of Regulation (EC) No 767/2008 that are applicable to third country nationals who are not subject to a visa requirement to cross the external borders.
- (5) **The provisions of paragraph 1 to 4 shall not apply to third country nationals who perform their border crossing on the basis of a valid Facilitated Transit Document (FTD) issued in accordance with Regulation (EC) 693/2003 provided that the following cumulative conditions are met:**
- (a) **they perform their transit by train;**
- (b) **they do not disembark in the territory of a Member State.**
-

Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**amending Regulation (EU) 2016/399 as regards the use of the Entry/Exit System**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 77(2)(b) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee,

Having regard to the opinion of the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code)<sup>1</sup> lays down the conditions, criteria and detailed rules for the crossing of the external borders of the Member States.

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<sup>1</sup> Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code) (Codification) OJ L 77, 23.3.2016, p. 1.

- (2) Regulation (EU) N° XXX of the European Parliament and of the Council establishing the Entry/Exit System ('EES') to register entry and exit data and refusal of entry data of third country nationals crossing the external borders of the Member States of the European Union and determining the conditions for access to the EES for law enforcement purposes]<sup>1</sup> aims at creating a centralised system for the registration of entry and exit data and refusal of entry data of third country nationals crossing the external borders of the Member States of the Union for a short stay [...].
- (3) In order to carry out checks on third country nationals pursuant to Regulation (EU) 2016/399, which include the verification of the identity and/ or the identification of the third country national as well as the verification that the third country national has not exceeded the maximum duration of authorised stay in the territory of the Member States, border guards should use all the information available, including data from the EES. The data stored in that system should also be used to verify that third country nationals holding a single or double entry visa have respected the maximum number of authorised entries.
- (4) To ensure full effectiveness of the EES, entry and exit checks need to be carried out in a harmonised way at the external borders. The establishment of the EES requires to provide the biometric data for creation of an individual file of third country nationals and also for the checks during the crossing of external borders. For effective implementation of that measures at the external borders, the entry conditions for third country nationals should be amended by the obligation to provide that biometric data. If a third country national refuses to provide biometric data for creation of the individual file or for performance of border check, the refusal of entry decisions should be adopted.
- (5) The establishment of an EES requires adapting the procedures for checking persons when crossing the external borders or internal borders with regard to which the checks have not yet been lifted laid down in Regulation (EU) 2016/399. In particular, the EES aims to abolish on entry and exit the stamping of the travel documents of third country nationals admitted for a short stay by replacing it by the electronic recording of the entry and exit directly in the EES. However, stamping of travel document on refusal of entry of a third country national is maintained since it concerns higher risk travellers. Furthermore, the establishment of the interoperability between the EES and the Visa Information System (VIS) needs to be taken into account in the border checks procedures. Lastly, the EES opens the possibility to use new technologies for the border crossings of short stay travellers.
- (5a) The above-mentioned adaptations of procedures should become effective in the Member States operating the EES on the date of entry into operation of the EES determined in accordance with the EES Regulation (EU) N° XXX.

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<sup>1</sup> OJ L ...

- (5b) By derogation to those adaptations, during the transitional period pending their connection to the EES, Member State not operating the EES should continue to apply the existing procedures laid down in Regulation (EU) 2016/399. Those procedures should include the maintenance of the stamping obligation and the existing procedures for check on borders, which do not include verification of the EES. For the reasons of transparency and legal certainty, those procedures should be set out in an Annex which should be added for this purpose to Regulation (EU) 2016/399.
- (6) During a period of six months after the EES has started operations, border guards should take into account the stays in the territories of the Member States during the six months preceding the entry or the exit by checking the stamps in the travel documents in addition to the entry/exit data recorded in the EES. Such measure should enable the required verifications to be carried out in those cases where a person would have been admitted for a short stay on the territory of the Member States in the six months preceding the start of operations of the EES. In addition there is a need to lay down specific provisions for those persons having entered the territory of the Member States and who have not yet exited it before the entry into operations of the system. In these situations, the last entry should also be recorded into the EES when exiting the territory of the Member States.
- (7) Taking into account the different situations in the Member States and at different border crossing points within the Member States concerning the number of third country nationals crossing the borders, Member States should be able to decide whether and to what extent to make use of technologies such as automated border control systems, "self-service kiosks" and e-gates. When using such technologies, it should be ensured that entry and exit checks are carried out in a harmonised way at the external borders and that an appropriate level of security is ensured.
- (8) In addition, the tasks and roles of the border guards when making use of such technologies need to be defined. In this regard, it should be ensured that the results of border checks performed through automated means are available to border guards so as to enable them to take the appropriate decisions. In addition, there is a need to supervise the use of the automated border control systems, "self-service kiosks" and e-gates by travellers so as to prevent fraudulent behaviour and uses. In addition, when carrying out this supervision, border guards should pay particular attention to minors and should be placed in a position that should enable them to identify persons needing protection.

- (9) Member States should also be able to establish national facilitation programmes on a voluntary basis to allow pre-vetted third country nationals to benefit at entry from derogations to the thorough checks. When using such national facilitation programmes, it should be ensured that they are established in a harmonised way and that the appropriate level of security is guaranteed.
- (10) This Regulation is without prejudice to the application of Directive 2004/38/EC of the European Parliament and of the Council<sup>1</sup>.
- (10a) (...) The European Data Protection Supervisor was consulted in accordance with Article 28(2) of Regulation (EC) No 45/2001 and delivered an opinion on ...
- (11) Since the objective of this Regulation, namely to provide for amendments to the existing rules of Regulation (EU) 2016/399 can only be achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as also set out in that Article, this Regulation does not go beyond what is necessary in order to achieve this objective.
- (12) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Regulation and is not bound by it or subject to its application. Given that this Regulation builds upon the Schengen *acquis*, Denmark shall, in accordance with Article 4 of that Protocol, decide within a period of six months after the Council has decided on this Regulation whether it will implement it in its national law.
- (13) This Regulation constitutes a development of the provisions of the Schengen *acquis* in which the United Kingdom does not take part, in accordance with Council Decision 2000/365/EC<sup>2</sup>; the United Kingdom is therefore not taking part in the adoption of this Regulation and is not bound by it or subject to its application.
- (14) This Regulation constitutes a development of the provisions of the Schengen *acquis* in which Ireland does not take part, in accordance with Council Decision 2002/192/EC<sup>3</sup>; Ireland is therefore not taking part in the adoption of this Regulation and is not bound by it or subject to its application.

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<sup>1</sup> Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States (OJ L 158, 30.4.2004, p. 77).

<sup>2</sup> Council Decision 2000/365/EC of 29 May 2000 concerning the request of the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen *acquis* (OJ L 131, 1.6.2000, p. 43).

<sup>3</sup> Council Decision 2002/192/EC of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen *acquis* (OJ L 64, 7.3.2002, p. 20).



- (15) As regards Iceland and Norway, this Regulation constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the latter's association with the implementation, application and development of the Schengen *acquis*<sup>1</sup> which fall within the area referred to in Article 1, point A of Council Decision 1999/437/EC<sup>2</sup>.
- (16) As regards Switzerland, this Regulation constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis*<sup>3</sup> which fall within the area referred to in Article 1, point A of Council Decision 1999/437/EC<sup>4</sup> read in conjunction with Article 3 of Council Decision 2008/146/EC<sup>5</sup>.

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<sup>1</sup> OJ L 176, 10.7.1999, p. 36.

<sup>2</sup> Council Decision 1999/437/EC of 17 May 1999 on certain arrangements for the application of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the association of those two States with the implementation, application and development of the Schengen *acquis* (OJ L 176, 10.7.1999, p. 31).

<sup>3</sup> OJ L 53, 27.2.2008, p. 52.

<sup>4</sup> Council Decision 1999/437/EC of 17 May 1999 on certain arrangements for the application of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the association of those two States with the implementation, application and development of the Schengen *acquis* (OJ L 176, 10.7.1999, p. 31).

<sup>5</sup> Council Decision 2008/146/EC of 28 January 2008 on the conclusion, on behalf of the European Community, of the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis* (OJ L 53, 27.2.2008, p. 1).

- (17) As regards Liechtenstein, this Regulation constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis*<sup>1</sup> which fall within the area referred to in Article 1, point A, of Council Decision 1999/437/EC<sup>2</sup> read in conjunction with Article 3 of Council Decision 2011/350/EU<sup>3</sup>.
- (17a) As regards Bulgaria, Croatia, Cyprus and Romania, provisions of this Regulation referring to VIS constitute provisions building upon, or otherwise relating to, the Schengen *acquis* within, respectively, the meaning of Article 3(2) of the 2003 Act of Accession, Article 4(2) of the 2005 Act of Accession and Article 4(2) of the 2011 Act of Accession.
- (18) Regulation (EU) 2016/399 should therefore be amended accordingly,

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<sup>1</sup> OJ L 160, 18.6.2011, p. 21.

<sup>2</sup> Council Decision 1999/437/EC of 17 May 1999 on certain arrangements for the application of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the association of those two States with the implementation, application and development of the Schengen *acquis* (OJ L 176, 10.7.1999, p. 31).

<sup>3</sup> Council Decision 2011/350/EU of 7 March 2011 on the conclusion, on behalf of the European Union, of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis*, relating to the abolition of checks at internal borders and movement of persons (OJ L 160, 18.6.2011, p. 19).

HAVE ADOPTED THIS REGULATION:

*Article 1*

Regulation (EU) 2016/399 is amended as follows:

(1) In Article 2, the following points 22, 23, 24 and 25 are added:

"22. 'Entry/Exit System (EES)' means the system established by [Regulation (EU) No° XXX of the European Parliament and of the Council establishing the Entry/Exit System (EES) to register entry and exit data and refusal of entry data of third country nationals crossing the external borders of the Member States of the European Union and determining the conditions for access to the EES for law enforcement purposes;

23. 'Self-service system' means an automated system which performs all or some of the border checks that are applicable to a person and which may be used for pre-enrolling data in EES;

24. 'e-gate' means an infrastructure operated by electronic means where the effective crossing of an external border takes place;

25. 'Automated Border Control system' means a system which allows for an automated border passage, and which is composed of a self-service system and an e-gate.

(1a) In Article 6 paragraph 1, point (f) is added:

“(f) they provide the biometric data, if required for:

- (i) creating the individual file in the Entry/Exit system in accordance with Articles 14 and 15 of Regulation establishing the Entry/Exit System (EES)];
- (ii) carry out of border checks according with Article 8(3) (a) (i) and (g) (i) of this Regulation, Article 21(2) and (4) of [Regulation establishing the Entry/Exit System (EES)] or Article 18 of Regulation (EC) No 767/2008.

(2) The following Article 6a is inserted:

"Article 6a

*Third country nationals for which data shall be entered into the EES*

1. Data on entry and exit of the following categories of persons shall be entered into the EES in accordance with Articles 14, 15, 17 and 18 of [Regulation establishing the Entry/Exit System (EES)]:
  - (a) third country nationals admitted for a short stay pursuant to Article 6(1) [or for a stay on the basis of a touring visa];
  - (b) third country nationals who are members of the family of a Union citizen to whom Directive 2004/38/EC applies and who do not hold a residence card pursuant to that Directive;
  - (c) third country nationals who are members of the family of nationals of third countries enjoying the right of free movement under Union law and who do not hold a residence card pursuant to Directive 2004/38/EC.
2. Data on third country nationals whose entry for a short stay [or on the basis of a touring visa] has been refused in accordance with Article 14 of this Regulation shall be entered in the EES in accordance with Article 16 of [Regulation establishing the Entry/Exit System (EES)].
3. Data on the following categories of persons shall not be entered into the EES:
  - (a) third country nationals who are members of the family of a Union citizen to whom Directive 2004/38/EC applies and who hold a residence card in accordance with that Directive;
  - (b) third country nationals who are members of the family of nationals of third countries enjoying the right of free movement under Union law who hold a residence card referred to in Directive 2004/38/EC;

- (b1) holders of residence permits referred to in point 16 of Article 2 other than those covered by points (a) and (b) of this paragraph;
- (b2) holders of long-stay visas;
- (b3) third country nationals exercising mobility in accordance with Directive 2014/66/EU<sup>1</sup> or Directive (EU) 2016/801<sup>2</sup> as those Directives set up specific intra-EU mobility schemes**
- (c) nationals of Andorra, Monaco, and San Marino and holders of a passport issued by the Vatican City State;
- (d) persons or categories of persons exempt from border checks or benefitting from facilitation of border crossing:
- (i) heads of State, heads of government and members of national government with accompanying spouses, sovereigns and other senior members of a royal family and members of their delegation in accordance with point 1 of Annex VII;
  - (ii) pilots of aircraft and other crew members in accordance with point 2 of Annex VII;
  - (iii) seamen in accordance with point 3 of Annex VII and seamen who are present within the territory of a Member State only when their ship puts in the area of the port of call;
  - (iv) cross-border workers in accordance with point 5 of Annex VII;

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<sup>1</sup> **Directive 2014/66/EU of the European Parliament and of the Council of 15 May 2014 on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer, OJ L 157, 27.5.2014, p. 1.**

<sup>2</sup> **Directive (EU) 2016/801 of the European Parliament and of the Council of 11 May 2016 on the conditions of entry and residence of third-country nationals for the purpose of research, studies, training, voluntary service, pupil exchange schemes or educational projects and au pairing (recast), OJ L 132, 21.5.2016, p. 21.**

- (v) rescue services, police, fire brigades acting in emergency situation and border guards in accordance with point 7 of Annex VII;
- (vi) offshore workers in accordance with point 8 of Annex VII;
- (vii) crew members and passengers of cruise ships in accordance with points 3.2.1, 3.2.2 and 3.2.3 of Annex VI;
- (viii) persons on board a pleasure boat who are not subject to border checks in accordance with points 3.2.4, 3.2.5 and 3.2.6 of Annex VI;
- (e) persons who are exempt from the obligation to cross external borders only at border crossing points and during the fixed opening hours pursuant to Article 5(2);
- (f) persons who present a valid local border traffic permit for their border crossing in accordance with Regulation (EC) No 1931/2006 of the European Parliament and of the Council;
- (g) crew of passengers and good trains on international connections;
- (h) persons who present for their border crossing
  - (i) a valid Facilitated Rail Transit Document issued in accordance with Regulation (EC) No 693/2003 or
  - (ii) a valid Facilitated Transit Document issued in accordance with Regulation (EC) No 693/2003 provided that they perform their transit by train and they do not disembark in the territory of a Member State.

The data of the family members referred to in points (a) and (b) shall not be entered into the EES, even if they are not accompanying or joining the Union citizen or a third country national enjoying the right of free movement."

(3) Article 8 is amended as follows:

(a) in paragraph 2, first subparagraph, the following sentence is added:

["If the travel document contains an electronic storage medium (chip), the authenticity and integrity of the chip data shall be confirmed using the complete valid certificate chain, unless this is impossible, for technical reasons or, in the case of a travel document issued by a third country, due to the non-availability of valid certificates."]

(b) paragraph 3 is amended as follows:

(i) points (a)(i), (a)(ii) and (a)(iii) are replaced by the following:

["(i) verification of the identity and the nationality of the third country national and the validity and authenticity of the travel document, by consulting the relevant databases, in particular:

- (1) the Schengen information system;
- (2) the Interpol database on stolen and lost travel documents;
- (3) national databases containing information on stolen, misappropriated, lost and invalidated travel documents.

This verification includes a thorough scrutiny of the travel document for signs of falsification and counterfeiting.]

[...] If the travel document contains a facial image recorded in the electronic storage medium (chip) and if the facial image recorded in the chip can be [...] technically accessed, this verification shall include the verification of the facial image recorded in the chip, by comparing electronically this image with the live facial image of the concerned third country national, except for third country nationals who have an individual file already registered in the EES. If technically and legally possible, this verification may be done by verifying the live fingerprints with the fingerprints recorded in the chip.

(ii) verification that the travel document is accompanied, where applicable, by the requisite visa, [touring visa], long-stay visa or residence permit.

If the residence permit contains an electronic storage medium (chip) the authenticity and integrity of the chip data shall be confirmed using the complete valid certificate chain, unless this is impossible, for technical reasons. The thorough checks on entry shall also comprise a systematic verification of the validity of the residence permit or long stay visa by consulting, in the SIS and in other relevant databases, information exclusively on stolen, misappropriated, lost and invalidated documents.<sup>[1]</sup>

(iii) for persons whose entry or whose refusal of entry is subject to a registration in the EES pursuant to Article 6a of this Regulation, a verification of the identity of the person in accordance with Article 21(2) of [Regulation establishing the Entry/Exit System (EES)] and, where applicable, an identification shall be carried out in accordance with Article 21 (4) of [Regulation establishing the Entry/Exit System (EES)]."

(ii) the following point (a)(iii a) is inserted after point (a)(iii):

"(iii a) for persons whose entry or whose refusal of entry is subject to a registration in the EES pursuant to Article 6a of this Regulation, verification that the third country national has not already reached or exceeded the maximum duration of authorised stay in the territory of the Member States and, for third country nationals holding a single or double entry visa, verification that they have respected the number of the maximum authorised entries, by consulting the EES in accordance with Article 21 of [Regulation establishing the Entry/Exit System (EES) ]."

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<sup>1</sup> These paragraphs may require further adjustments after the adoption of COM's proposal (2015)670/2.



(iii) point (b) is replaced by the following:

"(b) if the third country national holds a visa [or a touring visa] referred to in Article 6(1)(b) the thorough checks on entry shall also comprise the verification of the authenticity, territorial and temporal validity and status of the visa [or a touring visa] and, if applicable, of the identity of the holder of the visa [or a touring visa], by consulting the VIS in accordance with Article 18 of Regulation (EC) No 767/2008 of the European Parliament and of the Council<sup>1</sup>"

(iv) point (g)(i) is replaced by the following:

"(i) verification that the third country national is in possession of a document valid for crossing the border and that the document is accompanied, where applicable, by the requisite visa, [or a touring visa], long-stay visa or residence permit. Verification of the document shall include the consultation of relevant databases, in particular the Schengen Information System; the Interpol database on stolen and lost travel documents; and national databases containing information on stolen, misappropriated, lost and invalidated travel documents.<sup>[2]</sup> [...] If the travel document contains a facial image recorded in the electronic storage medium (chip) and if the facial image recorded in the chip can be [...] technically accessed, this verification shall include the verification of the facial image recorded in the chip, by comparing electronically this image with the live facial image of the concerned third country national, except for third country nationals who have an individual file already registered in the EES. If technically and legally possible, this verification may be done by verifying the live fingerprints with the fingerprints recorded the in the chip.

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<sup>1</sup> Regulation (EC) No 767/2008 of the European Parliament and of the Council of 9 July 2008 concerning the Visa Information System (VIS) and the exchange of data between Member States on short-stay visas (VIS Regulation)."

<sup>2</sup> This conditions is foreseen in the proposal (COM(2015)670/2) amending Article 7 of the SBC and will be part of the compulsory checks for persons enjoying the right of free movement. Depending on the final version of the text adopted, this sentence may require adjustments.

(v) the following points (g) (iv) and (v) are added:

"(iv) for persons whose exit is subject to a registration in the EES pursuant to Article 6a of this Regulation, a verification of the identity of the person in accordance with Article 21(2) of [Regulation establishing the Entry/Exit System (EES)] and, where applicable in accordance with Article 21(4) of [Regulation establishing the Entry/Exit System (EES)], an identification shall be carried out;

(v) for persons whose exit is subject to a registration in the EES pursuant to Article 6a of this Regulation, verification that the third country national did not exceed the maximum duration of authorised stay in the territory of the Member States, by consulting the EES in accordance with Article 21(3) of [Regulation establishing the Entry/Exit System (EES) ]."

(vi) point (h) (ii) is deleted.

(vii) point (i) is replaced by the following:

"~~(i)~~ for the purpose of identification of any person who may not fulfil, or who may no longer fulfil, the conditions for entry, stay or residence on the territory of the Member States, the VIS may be consulted in accordance with Article 20 of Regulation (EC) No 767/2008 and the EES may be consulted in accordance with Article 25 of [Regulation establishing the Entry/Exit System (EES) ]."

(viii) the following paragraph 9 is added:

"9. Any third country national shall have the right to ask border guard during border checks at entry about the maximum remaining number of days of his/her authorized stay, which shall take into account the number of entries and the length of stay authorised by the visa {or the touring visa}, and be provided with such information by the border guard on that occasion."

(4) The following Article 8a is inserted:

"Article 8a

*Use of automated border control systems for EU/EEA/CH citizens and for third country nationals who hold a residence card*

1. The following categories of persons may be permitted to use automated border control systems if the conditions listed under paragraph 2 are met:
  - (a) Union citizens within the meaning of Article 20(1) of the TFEU [...];
  - (b) nationals of third countries who, under agreements between the Union and its Member States, on the one hand, and those third countries, on the other hand, enjoy rights of free movement equivalent to those of Union citizens;
  - (c) third country nationals who are members of the family of a Union citizen to whom Directive 2004/38/EC applies, who hold a residence card referred to in that Directive;
  - (d) third country nationals who are members of the family of nationals of third countries enjoying the right of free movement under Union law who hold a residence card referred to in Directive 2004/38/EC.
2. In order to be permitted to use automated border control systems, the following cumulative conditions shall be met:
  - (a) the travel document [...] shall contain an electronic storage medium (chip) and the authenticity and integrity of the chip data shall be confirmed using the complete valid certificate chain;
  - (b) the travel document [...] shall contain a facial image recorded in the chip which can be technically accessed by the automated border control system so as to verify the identity of the holder of the travel document by comparing the facial image recorded in the chip and the live facial image; if technically and legally possible, this verification may be done by verifying the live fingerprints with the fingerprints recorded the in the chip of the travel document;

- (c) in addition, third country nationals enjoying the right of free movement under Union law who hold a valid residence card shall meet the following conditions:
- (i) the residence card [...] shall contain an electronic storage medium (chip) and the authenticity and integrity of the chip data shall be confirmed using the complete valid certificate chain;
  - (ii) the residence card [...] shall contain a facial image recorded in the chip which can be technically accessed by the automated border control system so as to verify the identity of the holder of the [...] residence card, by comparing the facial image recorded in the chip and the live facial image; if technically and legally possible, this verification may be done by verifying the live fingerprints with the fingerprints recorded the in the chip of the **residence card**.
3. Where the conditions under paragraph 2 of this Article are met, the border checks on entry and exit provided for in Article 8(2) and the border crossing itself may be carried out using an automated border control system. When carried out by means of an automated border control system, the border check on entry and exit shall systematically include the verification that the person does not represent a genuine, present and sufficiently serious threat to the internal security, public policy, international relations of the Member States or a threat to public health, including by consulting the relevant Union and national databases, in particular the Schengen Information System.[<sup>1</sup>]
4. On entry and exit, the results of the border checks carried out through a self-service system shall be made available to a border guard. Taking into account the results of the border checks, this border guard shall monitor the results of border checks and authorise the entry or exit or, otherwise, refer the person to a border guard who shall proceed with further checks.

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<sup>1</sup> A similar conditions is foreseen in the proposal (COM(2015)670/2) amending Article 7 of the SBC (further to the codification, current Article 8) and will be part of the compulsory checks for persons enjoying the right of free movement. Depending on the final version of the text adopted, this sentence may become redundant/obsolete.

5. The person shall be referred to a border guard in the following situations:
- (a) when one of the conditions listed under paragraph 2 is not fulfilled;
  - (b) when the results of the checks on entry or exit provided for under Article 8(2) question the identity of the person or when they reveal that the person represents a genuine, present and sufficiently serious threat to the internal security, public policy, international relations of the Member States or a threat to public health;
  - (c) in case of doubt.
6. Without prejudice to paragraph 4, the border guard supervising the border crossing may decide to refer persons using the automated border control system to a border guard based on other reasons.
7. Automated border control systems shall be operated under the supervision of a border guard who shall be in charge of observing the users and detecting any inappropriate, fraudulent or abnormal use of the system."
- (5) The following Article 8b is inserted:

"Article 8b

*Use of automated border control systems for third country nationals who hold a residence permit*

1. Third country nationals who hold a residence permit may be [...] permitted to use automated border control systems where the following cumulative conditions are met:
- (a) the travel document [...] shall contain an electronic storage medium (chip) and the authenticity and integrity of the chip data shall be confirmed using the complete valid certificate chain;

- (b) the travel document [...] shall contain a facial image recorded in the chip which can be [...] technically accessed by the automated border control system so as to verify the identity of the holder of the travel document by comparing the facial image recorded in the chip and his or her live facial image; **if technically and legally possible, this verification may be done by verifying the live fingerprints with the fingerprints recorded the in the chip of the travel document;**
  - (c) the residence permit [...] shall contain an electronic storage medium (chip) and the authenticity and integrity of the chip data shall be confirmed using the complete valid certificate chain;
  - (d) the residence permit [...] shall contain a facial image recorded in the chip which can be technically accessed by the automated border control system so as to verify the identity of the holder of the residence permit, by comparing the facial image recorded in the chip and the live facial image; **if technically and legally possible, this verification may be done by verifying the live fingerprints with the fingerprints recorded the in the chip of the residence permit.**
2. Where the conditions set out in paragraph 1 are met, the applicable border checks on entry and exit and the border crossing itself may be carried out using an automated border control system. In particular:
- (a) on entry, third country nationals who hold a residence permit shall be subject to the border checks referred to in Article 8(2) and points (i),(ii) [...] and (vi) of Article 8(3)(a);
  - (b) on exit, third country nationals who hold a residence permit shall be subject to the border checks referred to in Article 8(2) and points (i),(ii) and (iii) of Article 8(3)(g).

3. On entry and exit, the results of the border checks carried out through the self-service system shall be made available to a border guard. Taking into account the results of the border checks, this border guard shall monitor the results of border checks [...] and authorise entry or exit or, otherwise, refer the person to a border guard who shall proceed with further checks.
4. The person shall be referred to a border guard in the following situations:
  - (a) when one or several of the conditions listed under paragraph 1 is or are not fulfilled;
  - (b) when the results of the checks on entry or exit set out in paragraph 2 put into question the identity of the person or when they reveal that the person is considered to be a threat to the internal security, public policy, international relations of any of the Member States or to public health;
  - (c) when the checks on entry or exit set out in paragraph 2 of reveal that one or several of the entry or exit conditions are not met;
  - (d) in case of doubt.
5. Without prejudice to paragraph 4, the border guard supervising the border crossing may decide to refer persons using the automated border control system to a border guard based on other reasons-
6. Automated border control systems shall be operated under the supervision of a border guard who shall be in charge of observing the users and detecting any inappropriate, fraudulent or abnormal use of the system."

(6) The following Article 8c is inserted:

"Article 8c

*Use of self-service systems for pre-enrolling data in the EES*

1. Persons whose border crossing is subject to a registration in the EES in accordance with Article 6a may use self-service systems for the purpose of pre-enrolling **in the EES** [...] the [...] data referred in paragraph (4)(a) of this Article [...] provided the following cumulative conditions are verified:
  - (a) the travel document [...] shall contain an electronic storage medium (chip) and the authenticity and integrity of the chip data shall be confirmed using the complete valid certificate chain;
  - (b) the travel document [...] shall contain a facial image recorded in the chip which can be [...] technically accessed by the [...] self-service system so as to verify the identity of the holder of the travel document by comparing the facial image recorded in the chip and his or her live facial image; **if technically and legally possible, this verification may be done by verifying the live fingerprints with the fingerprints recorded the in the chip of the travel document.**
2. Pursuant to paragraph 1, the self-service system shall verify whether the person has a previous registration in the EES and the identity of the third country national in accordance with Article 21(2) of [Regulation establishing the Entry/Exit System (EES)].
3. In conformity with Article 21(4) of [Regulation establishing the Entry/Exit System (EES)], the self-service system shall carry out an identification in accordance with Article 25 of [Regulation establishing the Entry/Exit System (EES)] [...]
  - ~~(a)~~ [...]
  - ~~(b)~~ [...]
  - ~~(c)~~ [...]



In addition, in accordance with Articles 21(4) of the [Regulation establishing the Entry/Exit System (EES)] where an identification in the EES is carried out, the following provisions shall apply:

- (a) for third country nationals who are subject to a visa requirement to cross the external borders, if the search in the VIS with the data referred to in Article 18(1) of Regulation (EC) No 767/2008 indicates that the person is recorded in the VIS, a verification of fingerprints against the VIS shall be carried out in accordance with Article 18 (5) of Regulation (EC) No 767/2008. In circumstances where a verification of the person pursuant to paragraph 2 of this Article failed, the border guard [...] shall access the VIS data for identification in accordance with Article 20 of Regulation (EC) No 767/2008.
- (b) for third country nationals who are not subject to a visa requirement to cross the external borders and who are not found in the EES further to the identification run in accordance with Article 25 of [Regulation establishing the Entry/Exit System (EES)], the VIS shall be consulted in accordance with Article 19a of Regulation (EC) No 767/2008.

4. In the event that data on the person is not recorded in the EES pursuant to paragraphs 2 and 3, the following provisions shall apply:

- (a) third country nationals who are subject to a visa requirement to cross the external borders shall pre-enrol in the EES through the self-service system the data listed under Article 14(1), (2)(c), (d),(e), (f) and [(g)] and, where relevant, the data referred to under Article 14 (6) of [Regulation establishing the Entry/Exit System (EES)] and third country nationals who are not subject to a visa requirement to cross the external borders shall pre-enrol in the EES through the self-service system the data listed under Articles 15(1)(a), (b) and (c) and 14(2)(c) and, where relevant, the data referred to in Article (15)(1)(d), of [Regulation establishing the Entry/Exit System (EES)];

(b) subsequently, the person shall be referred to a border guard who shall:

(i) [...] where not all the required data could be collected through the self-service kiosk, pre-enrol the concerned data,

(ii) [...] verify:

([...]1) that the travel document used at the self service system corresponds to the one held by the person in front of the border guard;

([...]2) that the live facial image of the person concerned corresponds to the facial image that was collected through the self service system;

([...]3) and, for persons who do not hold a visa required pursuant to Regulation (EC) No 539/2001, that the live fingerprints of the concerned person correspond to the fingerprints that were collected through the self-service system;

(iii[...]) when the decision to authorise or refuse entry has been taken, confirm the [...] data referred to in point (a) of this paragraph and introduce the data foreseen under Articles 14(2)(a), (b) [...] or 16(2)(a), (b), (c) and (d) [...] of the [Regulation establishing the Entry/Exit System (EES)].

5. Where it results from the operations provided for in paragraphs 2 and 3 [...] that data on the person are recorded into the EES, the self-service system shall check whether one or more of the data referred in paragraph (4)(a) of this Article [...] need to be updated. In addition, if it results that data on the person are recorded into the EES but that the third country national intends to cross for the first time after the creation of the individual file the internal borders according Article 3a(2) of the [Regulation establishing the Entry/Exit System (EES)] or external borders of a Member State which is subject to the full application of Regulation (EC) No 767/2008, the VIS shall be consulted as referred to under Article 21(5) of the [Regulation establishing the Entry/Exit System (EES)].

6. Where it is verified pursuant to paragraph 5 that the person has a [...] individual file registered in the EES but that his or her data[...] needs to be updated, the following provisions shall apply:
- (a) the person shall pre-enrol through the self-service system the updated data in the EES;
  - (b) the person shall be referred to a border guard. That border guard shall verify the correctness of the update that was pre-enrolled through the self-service system and, when the decision to authorise or refuse entry has been taken, update the individual file in accordance with Article 13(2) of [Regulation establishing the Entry/Exit System (EES)].
7. Self-service systems shall be operated under the supervision of a border guard who shall be in charge of detecting any inappropriate, fraudulent or abnormal use of the system."

(7) The following Article 8d is inserted:

"Article 8d

*Use of self-service systems and/or e-gates for the border crossing of third country nationals of whose border crossing is subject to a registration in the EES*

1. Persons whose border crossing is subject to a registration in the EES in accordance with Article 6a may be permitted to use a self-service system to have their border checks performed if the following cumulative conditions are met:
- (a) the travel document [...] shall contain an electronic storage medium (chip) and the authenticity and integrity of the chip data shall be confirmed using the complete valid certificate chain;
  - (b) the travel document [...] shall contain a facial image recorded in the chip which can be [...] technically accessed by the [...] self-service system so as to verify the identity of the holder of the travel document, by comparing the facial image recorded in the chip and his/her live facial image;

- (c) the person is already enrolled or pre-enrolled in the EES.
2. Where the conditions laid down in paragraph 1 are met, the border checks on entry [...] provided for in Articles 8(2) and 8(3)(a) and (b) [...] and on exit provided for in Articles 8(2) and 8(3)(g) and (h) may be carried out through a self-service system. When carried out through an automated border control system, the borders check on exit shall include the checks provided for in Article 8(3)(h).

If a person is granted access to a national facilitation programme established by a Member State pursuant to Article 8e, the checks carried out through a self-service system on entry may not include examination of the aspects referred to in Article 8(3)(a) (iv) and (v) when crossing the external borders of that Member State or the external borders of another Member States having concluded an agreement with the Member State which granted the access as referred to under Article 8e(4).

3. On entry and exit, the results of the border checks carried out through the self-service system shall be made available to a border guard. Taking into account the results of the border checks, this border guard shall monitor the results of the border checks and authorise the entry or exit or, otherwise, refer the person to a border guard who shall proceed with further checks.
4. The person shall be referred to a border guard in the following situations:
- (a) when one or several of the conditions listed under paragraph 1 is or are not fulfilled;
  - (b) when the checks on entry or exit under paragraph 2 reveal that one or several of the entry or exit conditions are not met;
  - (c) when the results of the checks on entry or exit under paragraph 2 put into question the identity of the person or when they reveal that the person is considered to be a threat to the internal security, public policy, international relations of any of the Member States or to public health;
  - (d) in case of doubt.
  - (e) when no e-gates are available.

5. In addition to the situations referred to in paragraph 4, the border guard supervising the border crossing may decide to refer persons using self-service system to a border guard based on other reasons.
6. Persons whose border crossing is subject to a registration in the EES in accordance with Article 6a(1) and who used a self-service system for the performance of their border checks may be authorised to use an e-gate. Where an e-gate is used, the corresponding registration of the entry/exit record and the linking of that record to the concerned individual file pursuant to Article 13 of [Regulation establishing the Entry/Exit System (EES)] shall be carried out when performing the border crossing through the e-gate. Where the e-gate is not aggregated to the self- service system, a verification of the identity of the user shall take place at the e-gate in order to verify that the person using the e-gate corresponds to the person that used the self-service system. The verification shall be made by using at least one biometric identifier.
7. Where the conditions listed in [...] paragraph 1(a) or (b) this Article, or in both, are not fulfilled, part of the border checks on entry pursuant to Article 8(3)(a) and (b) and exit [...] pursuant to Article 8(3)(g) and (h) may be carried out through a self-service system. [...] The border guard may perform only those verifications pursuant to Article 8(3)(a) and (b) as well as Article 8(3)(g) and (h) that could not be carried out through the self-service system. In addition, the border guard shall verify that the travel document used at the self- service system corresponds to the one held by the person standing before the border guard.
8. Self-service systems and e-gates shall be operated under the supervision of a border guard who shall be in charge of detecting any inappropriate, fraudulent or abnormal use of the system or e-gate, or both."

(8) The following Article 8e is inserted:

"Article 8e

*National facilitation programmes*

1. Each Member State may establish a voluntary programme in order to allow third country nationals [...] or nationals of a specific third country who do not enjoy the right of free movement under Union law [...] to benefit from the facilitations made pursuant to paragraph 2 of this Article when crossing the external border of a Member State.
2. By way of derogation from Article 8(3)(a), for third country nationals referred to paragraph 1 of this Article and who are granted access to the programme, the thorough checks on entry may not include examination of the aspects referred to in Article 8(3)(a) (iv) and (v) when crossing the external border of such a Member State [...].

2a. The Member State shall carry out a pre-vetting of the third country nationals applying to the programme

The pre-vetting is carried out by border guards, visa authorities defined under Article 3(1)(4) of Regulation establishing Entry/Exit system (EES) or by immigration authorities [...] defined under Article 3(1) (3) of Regulation establishing Entry/Exit system (EES);

~~(a)~~ [...]

~~(b)~~ [...]

~~(e)~~3. The competent authorities of a Member State [...] only grant access to the programme when the following minimum conditions are met:

a) [...];

b) [...];

c) the applicant fulfils the entry conditions set out in Article 6(1) of this Regulation;

- d) the applicant's travel document, visa, [or a touring visa], long-stay visa and/ or residence permit presented, is or are valid and not false, counterfeited or forged;
- e) the applicant proves the need for or justifies the intention to travel frequently or regularly;
- f) the applicant proves integrity and reliability, in particular, if applicable, that previous visas with limited territorial validity have been lawfully used, the applicant's economic situation in the country of origin and the genuine intention to leave the territory of the Member States in due time. In accordance with Article 23 of [Regulation establishing the Entry/Exit System (EES)], the competent authorities [...] shall have access to consult the EES to verify that the applicant has not previously exceeded the maximum duration of authorised stay in the territory of the Member States;
- g) the applicant justifies the purpose and conditions of the intended stays;
- h) the applicant possesses sufficient means of subsistence both for the duration of the intended stays and for the return to the country of origin or residence, or that the applicant is in a position to acquire such means lawfully;

[...]

[...]

~~(d)~~4. First access to the programme shall be granted for a maximum of one year, and can be prolonged after this first year for a maximum of 5 more years or until the end of the validity of an issued multiple-entry visas, long-stay visas and residence permits whichever is shorter;

In case of a prolongation the Member State shall reassess every year the situation of each third country national who is granted access to the programme in order to ensure that, based on updated information, the [...] the third country national concerned still meets the conditions laid down in [...] paragraph 3. This reassessment could be performed at the occasion of border checks.

~~(f)~~5. The [...] checks on entry [...] pursuant to Articles 8(3)(a) and 8(3)(b) and on exit pursuant to Article 8(3)(g) shall also comprise [...] the fact that the third country has a valid access to the programme;

Border guards may carry out verification of the third country national benefiting from the programme on entry pursuant to Articles 8(3)(a) and 8(3)(b) and on exit pursuant to Article 8(3)(g) without comparing electronically biometrics, but by comparing a facial image taken from the chip and the facial image of the passenger's individual EES file with a passenger. Full verification shall be carried out on random **and on** risk analysis based.

~~(g)~~6. the competent authorities of a Member State [...] shall immediately revoke the access granted to a third country national to the programme:

- (i) if it becomes evident that the conditions for granting access to the programme were not met;
- (ii) if it becomes evident that the conditions for granting access to the programme are no longer met.

7. When verifying that the applicant fulfils conditions set out in [...] paragraph 3, particular consideration shall be given to assessing whether the applicant presents a risk of illegal immigration or a risk to the security of the Member State(s) and whether the applicant intends to leave the territory of the Member State(s) during the authorised stay.

The means of subsistence for the intended stays shall be assessed according to the duration(s) and the purpose(s) of the envisaged stay(s) and by reference to average prices in the Member State(s) concerned for board and lodging in budget accommodation, on the basis of the reference amounts set by the Member States in accordance with Article 39(1)(c). A proof of sponsorship or private accommodation, or both, may also constitute evidence of sufficient means of subsistence.



The examination of an application shall be based in particular on the authenticity and reliability of the documents submitted and on the veracity and reliability of the statements made by the applicant. If a Member State responsible for examining an application has any doubts about the applicant, the applicant's statements or supporting documents that have been provided, it may consult other Member States before any decision on the application is taken.

48. Two or more Member States having established their own national programme pursuant to this Article may conclude among them an agreement in order to ensure that the beneficiaries of their national programmes may benefit from the facilitations recognised by the other national programme(s). Within the time-limit of one month from the conclusion of the agreement, a copy of the agreement shall be transmitted to the Commission.

59. The Commission shall, before the end of the third year of application of this Article, transmit to the European Parliament and to the Council an evaluation of its implementation. On the basis of that evaluation, the European Parliament or the Council may invite the Commission to propose the establishment of a Union programme for frequent and pre-vetted third country national travellers."

(9) Article 9 is amended as follows:

(a) Paragraph 3 is replaced by the following:

"3. Even in the event that checks are relaxed, the border guard shall enter the data in the EES, in accordance with Article 6a. Where the data cannot be entered by electronic means it shall be entered manually."

(b) The following paragraph 3a is inserted:

"3a. In case of technical impossibility to enter data in the Central System of the EES or in case of failure of the Central System of the EES, the following provisions shall apply:

- (i) by way of derogation from Article 6a of this Regulation, the data referred to in Articles 14, 15, 16, 17 and 18 of [Regulation establishing the Entry/Exit System (EES)] shall be temporarily stored in the National Uniform Interface as defined in Article 6 of [Regulation establishing the Entry/Exit System (EES)]. If this is not possible, the data shall be temporarily stored locally. In [...] all cases, the data shall be entered into the Central System of the EES as soon as the technical impossibility or failure has been remedied. Member States shall take the appropriate measures and deploy the required infrastructure, equipment and resources in order to ensure that such temporary local storage can be carried out at any time and for any of their border crossing points;

In the exceptional situation where there will be no technical possibility to register in the Central System, in the National Uniform Interface and local electronic temporary storage is technically impossible, Member States shall store manually the data referred to in articles 14, 15, 16, 17 and 18 with the exemption of biometric data and in addition affix an entry or exit stamp in the travel document of a third country national. These manually stored data shall be entered in the system as soon as possible.

- (ii) by way of derogation from Articles 8(3)(a)(iii) and 8(3)(g)(iv) for nationals of third countries holding a visa [or a touring visa] referred to in Article 6(1)(b), when technically possible, the verification of the identity of the holder of the visa shall be carried out by consulting directly the VIS in accordance with Article 18 of Regulation (EC) No 767/2008."

(10) In Article 10, the following paragraphs 3a and 3aa are [...] added:

"3a. Where Member States decide to use automated border control systems, e-gates and/or self-service systems, [...]; they shall use the signs provided for in part D of Annex III to identify the respective lanes."

3aa Where Member States decide to establish a national facilitation programme in accordance with Article 8e, they may decide to use specific lanes for the third country nationals benefiting from such national facilitation programme.

(11) Article 11 is replaced by the following:

"Article 11

*Stamping of travel documents*

1. Where provided expressly by its national legislation, a Member State may stamp on entry and exit the travel document of third country nationals holding a residence permit or long-stay visa issued by that Member State.
- 1a. The travel document of a third-country national holder of a Facilitated Rail Transit Document issued in accordance with Regulation (EC) 693/2003 shall [...] be stamped on entry and exit.
2. The practical arrangements for stamping are set out in Annex IV".

(12) Article 12 is replaced by the following:

"Article 12

*Presumptions as regards fulfilment of conditions of short stay*

1. Without prejudice to Article 12a, if a third country national present on the territory of a Member State [...] has no individual file created or [...] there is no last relevant entry/exit record [...], the competent authorities may presume that the person does not fulfil, or no longer fulfils, the conditions [...] of duration of authorised stay [...] within the territory of the Member States.  
  
In addition, without prejudice to Article 12a, the competent authorities may presume that a third country national did not fulfil the conditions relating to the duration of the previous stay if during the performance of the border checks on entry it results that the previous entry/exit record of the third country national does not contain an exit date.
2. This presumption shall not apply to a third country national who can provide, by any means, credible evidence that he or she [...] enjoys the right of free movement under Union law or that he or she [...] holds a residence permit or a long stay visa. Where applicable, Article 32 of [Regulation establishing the Entry/Exit System (EES)] shall be applied.

3. The presumption referred to in paragraph 1 may be rebutted where the [...] third country national provides, by any means, credible evidence, such as transport tickets or proof of his or her presence outside the territory of the Member States or of the date of expiry of a previous residence permit or long stay visa, that he or she has respected the conditions relating to the duration of a short stay.

In such [...] a case the competent authorities shall create an individual file if necessary or indicate in the Entry/Exit System the date on which, and the place where, he or she crossed the external border of one of the Member States in accordance with Article 18 of [Regulation establishing the Entry/Exit System (EES)];

4. Should the presumption referred to in paragraph 1 not be rebutted, the third-country national may be returned in accordance with Directive 2008/115/EC<sup>1</sup> and with national law respecting that Directive.

[...]

A third country national [...] enjoying the right of free movement under Union law may only be [...] returned [...] in accordance with Directive 2004/38/EC."

- (13) The following Article 12a is inserted:

"Article 12a

*Transitional period and transitional measures*

1. For a period of six months after the EES has started operations, in order to verify at entry that a person has not exceeded the number of entries authorised by the single or double entry visa and to verify at entry and at exit that a person entering for a short stay has not exceeded the length of the maximum authorised stay, the [...] border guards [...] shall take into account the stays in the territories of the Member States during the 180 days preceding the entry or the exit by checking the stamps in the travel documents in addition to the entry/exit data recorded in the EES.

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<sup>1</sup> Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (OJ L 348, 24.12.2008, p. 98).

2. Where a person has entered the territory of the Member States and has not yet exited it before the EES started operations, an individual file shall be created in the EES and the date of that entry shall be entered in the entry/exit record in accordance with Article 14(2) of [Regulation establishing the Entry/Exit System (EES)] when the person exits. This rule shall not be limited to the six months after the EES has started operations referred to in paragraph 1. In case of discrepancy between the date of the entry stamp and the data recorded in the EES, the concerned stamp shall prevail."

(14) Article 14 is amended as follows

(a) in paragraph 2 the following third subparagraph is added:

"Data on third country nationals whose entry for a short stay [...] has been refused shall be registered in the EES in accordance with Article 6a(2) of this Regulation and Article 16 of [Regulation establishing the Entry/Exit System (EES)]."

(b) in paragraph 3 the third subparagraph is replaced by the following:

"Without prejudice to any compensation granted in accordance with national law, the third country national concerned shall, where the appeal concludes that the decision to refuse entry was ill-founded, be entitled to correction of the data inserted into the EES or of the cancelled entry stamp, or both, and any other cancellations or additions which have been made, by the Member State which refused entry."

(14a) [...] Article 20 is amended as follows

Paragraph 1(a) is replaced by the following:

"Heads of State, heads of government and members of national government with accompanying spouses, sovereigns and other senior members of a royal family and members of their delegation(s);"

- (15) Annexes III, IV, [...]V and VII are amended in accordance with the Annex to this Regulation
- (16) Annex VIII is deleted.
- (17) Annex IX is added.

*Article 2*

1. This Regulation shall enter into force on the twentieth day following that of its publication.
2. It shall apply from the date on which the EES is to start operations, as determined by the Commission in accordance with Article 60 of [Regulation (EU) N° XXX of the European Parliament and of the Council establishing the Entry/Exit System (EES) to register entry and exit data of third country nationals crossing the external borders of the Member States of the European Union and determining the conditions for access to the EES for law enforcement purposes].
- 2a. By derogation to paragraph 2, during the transitional period pending their connection to the EES in accordance with Article 60(1b) of [Regulation (EU) N° XXX of the European Parliament and of the Council establishing the Entry/Exit System (EES) to register entry and exit data of third country nationals crossing the external borders of the Member States of the European Union and determining the conditions for access to the EES for law enforcement purposes], Member States not operating the EES, for checks on borders in accordance with Regulation (EU) 2016/399 shall apply procedures set out in Annex IX to that Regulation.
3. This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at Brussels,

*For the European Parliament*

*For the Council*

The President    The President

**ANNEX**  
*to the*

**Proposal for a**

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL  
amending Regulation (EU) 2016/399 as regards the use of the Entry/Exit System**

*ANNEX*

Annexes to Regulation (EU) 2016/399 are amended as follows:

1. Part D and E is added to Annex III:

**"PART D**

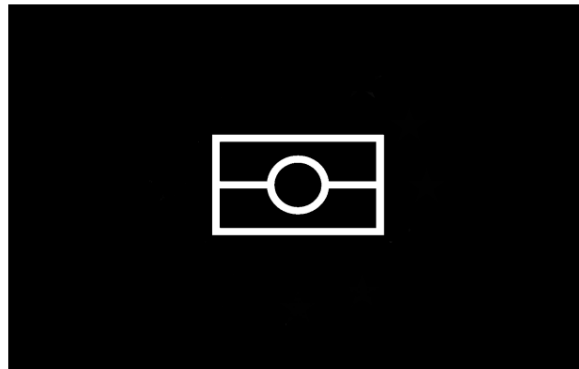
Part D1: ABC lanes for EU/EEA/CH citizens



**EU / EEA / CH  
CITIZENS**

[...]

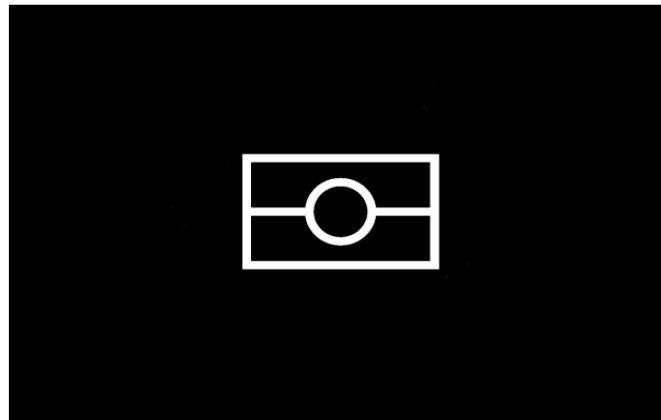
Part D2: ABC lanes for third country nationals



**THIRD-COUNTRY  
NATIONALS**

[...]

Part D3: ABC lanes for all passports



**ALL-PASSPORTS**

[...]



## Part E: Lanes for Registered Travelers



2. Annex IV is amended as follows:

(a) point 1 is replaced by the following:

"1. The travel document to which a Facilitated Rail Transit Document issued in accordance with Regulation (EC) No 693/2003 is affixed shall [...] be stamped on entry and exit in accordance with Article 11. Besides, where provided expressly by its national legislation, a Member State may stamp on entry and exit the travel document of those third country nationals holding a residence permit or long-stay visa issued by that same Member State in accordance with Article 11. In addition, in accordance with Annex V part A, where third country nationals are refused entry pursuant to Article 14, the border guard shall affix an entry stamp on the passport, cancelled by a cross in indelible black ink, and write opposite it on the right-hand side, also in indelible ink, the letter(s) corresponding to the reason(s) for refusing entry, the list of which is given on the standard form for refusing entry shown in Part B of Annex V."

(b) point 1a is added:

"The specifications of those stamps are laid down in the Schengen Executive Committee Decision SCH/COM-EX (94) 16 rev and SCH/Gem-Handb (93) 15 (CONFIDENTIAL)."

(c) point 3 is replaced by the following:

"3. In case of refusal of entry of a third country national subject to the visa obligation, the stamp shall, as a general rule, be affixed on the page facing the one on which the visa is affixed."

If that page cannot be used, the stamp shall be entered on the following page. The machine readable zone shall not be stamped."

3. Annex V part A is amended as follows:

(a) point 1(b) is replaced by the following:

"(b) for third country nationals whose entry for a short stay [or on the basis of a touring visa] has been refused, the data on refusal of entry shall be registered into the EES in accordance with Article 6a(2) of this Regulation and Article 16 of [Regulation establishing the Entry/Exit System (EES)]. In addition, the border guard shall affix an entry stamp on the passport, cancelled by a cross in indelible black ink, and write opposite it on the right-hand side, also in indelible ink, the letter(s) corresponding to the reason(s) for refusing entry, the list of which is given on the standard form for refusing entry shown in Part B of this Annex;"

(b) point 1(d) is replaced by the following:

"(d) for third country nationals whose refusals of entry shall not be registered into the EES, the border guard shall affix an entry stamp on the passport, cancelled by a cross in indelible black ink, and write opposite it on the right-hand side, also in indelible ink, the letter(s) corresponding to the reason(s) for refusing entry, the list of which is given on the standard form for refusing entry shown in Part B of this Annex. In addition, for these categories of persons, the border guard shall record every refusal of entry in a register or on a list stating the identity and nationality of the third country national concerned, the references of the document authorising the third country national to cross the border and the reason for, and date of, refusal of entry;"

(c) point 1(e) is added:

"(e) The practical arrangements for stamping are set out in Annex IV."

(4) In Annex V, part B, in the Standard form for refusal of entry at the border, is amended as follows:

(J) has refused to provide the biometric data, if required

for the creation of the individual file in the Entry/Exit system

to carry out the border check.

(5) Annex VII is amended as follows:

point 1 is replaced by the following:

By way of derogation from Article 6 and Articles 8 to 14, Heads of State, heads of government and members of national government with accompanying spouses, sovereigns and other senior members of a royal family and the members of their delegation, whose arrival and departure have been officially announced through diplomatic channels to the border guards, may not be subject to border checks.

(6) The following Annex IX is added:

"Annex IX

*Procedures for border checks applicable to the Member States not operating the EES pending their connection to the EES*

By derogation to Article 2(2) of Regulation XXXX/XXXX amending Regulation (EU) 2016/399 as regards the use of the Entry/Exit System, during the transitional period pending their connection to the EES in accordance with Article 60(1b) of [Regulation (EU) N° XXX of the European Parliament and of the Council establishing the Entry/Exit System (EES) to register entry and exit data of third country nationals crossing the external borders of the Member States of the European Union and determining the conditions for access to the EES for law enforcement purposes], Member States not operating the EES, for checks on borders shall not apply procedures set out in Articles 6 to 14 of this Regulation, but instead, shall apply the procedures set out in this Annex.

Article 6

[reproduce the whole text in its version from before the entry into force of this Regulation]

Article 7

[reproduce the whole text in its version from before the entry into force of this Regulation]

Article 8

[reproduce the whole text in its version from before the entry into force of this Regulation]

Article 9

[reproduce the whole text in its version from before the entry into force of this Regulation]

Article 10

[reproduce the whole text in its version from before the entry into force of this Regulation]

Article 11

[reproduce the whole text in its version from before the entry into force of this Regulation]

Article 12

[reproduce the whole text in its version from before the entry into force of this Regulation]

Article 13

[reproduce the whole text in its version from before the entry into force of this Regulation]

Article 14

[reproduce the whole text in its version from before the entry into force of this Regulation]"

**Annex III**

**[reproduce the whole text in its version from before the entry into force of this Regulation]'**

**Annex IV**

**[reproduce the whole text in its version from before the entry into force of this Regulation]'**

**Annex V**

**[reproduce the whole text in its version from before the entry into force of this Regulation]'**

**Annex VI**

**[reproduce the whole text in its version from before the entry into force of this Regulation]'**

**Annex XII**

**[reproduce the whole text in its version from before the entry into force of this Regulation]'**

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